

Miller

MINUTES AND PROCEEDINGS

OF A

Division Court Martial,

BEGUN AND HOLDEN AT BOSTON, ON TUESDAY,
OCTOBER 29, 1805,

AS THEY RELATE TO THE TRIAL

OF

2521

CAPT. JOSEPH LORING, JUN.

ONE OF THE OFFICERS ORDERED TO BE TRIED BY
SAID COURT.



Boston :

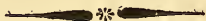
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1806.

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TO THE
OFFICERS
OF THE
FIRST DIVISION OF MASSACHUSETTS MILITIA.



GENTLEMEN,

THE discharge of those duties, which devolved on me on the trial of Captain Loring, was attended with many circumstances peculiarly unpleasant. I could not but severely regret the finding myself compelled to differ in opinion from the Court, on the judgment they were pleased to pronounce. But the wanton impeachment, and base misrepresentation of the motives, which governed me on that occasion, have been the sources of deeper affliction. For, although I am, and ex-

er have been, solely actuated by a sincere and conscientious endeavour to perform all parts of my duty with the strictest impartiality and the utmost correctness, and have all the support to be derived from a full conviction of my having acted on all official occasions according to the best of my ability and understanding, yet I do not pretend to be unaffected by calumny. I am not totally insensible to the aspersions and calumnies even of the worthless ; for such aspersions and calumnies may reach those, to whom my character, and those of their authors, are unknown. Consequently the reproaches, which some have seen fit to cast on me, cannot be permitted to be passed entirely unnoticed. I have therefore deemed it not only to be proper, but a duty, to submit to your consideration, and that of the public, a copy of the record of all my proceedings, and those of the Court, relating to the trial of Captain Loring, that

not only you, but the world, may have a fair and full opportunity of examining my conduct, and judging how far such reproaches and calumnies have been merited by me.

With the warmest wishes for your happiness, collectively and individually,

I am,

Gentlemen,

Your humble Servant,

SIMON ELLIOT, *Major General.*

Boston, May, 1806.



MINUTES AND PROCEEDINGS

OF A

Division Court Martial.

Minutes and Proceedings of a Division Court Martial, begun and holden at Boston, in the County Court House, on Tuesday, the twenty-ninth day of October, in the year of our Lord one thousand eight hundred and five, by order of the Honorable SIMON ELLIOT, Esquire, Major General of the first Division of the Militia of the Commonwealth of Massachusetts, so far as the Minutes and Proceedings relate to the trial of Capt. JOSEPH LORING, jun. one of the officers ordered to be tried by said Court.

Present.

LIEUT. COL. JOHN BARKER, 2d Reg. 1st Brig. 1st Division,
PRESIDENT.

Members.

Major BARNABAS CLARK, 3d Regiment, 1st Brig. 1st Div.
Major OLIVER JOHONNOT, Sub Legion Artil. Legion. Brig.
1st Division.
Capt. WILLIAM BARNES, 1st Reg. 1st Brigade, 1st Division.
Capt. HENRY PURKITT, Cavalry Legionary Brigade.
Capt. ADAM KINSLEY, 2d Reg. 2d Brigade, 1st Division.
Capt. MICHAEL HARRIS, jun. 1st Reg. 2d Brigade, 1st Div.
Capt. JOHN ROBINSON, Bat. of Artillery, 1st Brig. 1st Div.
Lieut. JOHN PRATT, 2d Regiment, 1st Brigade, 1st Division.
Lieut. DAVID SHEPARD, 3d Reg. 2d Brigade, 1st Division.
Lieut. ELISHA FRENCH, jun. 3d Reg. 2d Brigade, 1st Div.
Lieut. LEWIS FISHER, Squadron of Cavalry, 2d Brig. 1st Div.
Lieut. WILLIAM TURNER, 1st Reg. 1st Brigade, 1st Div.

Capt. CHARLES DAVIS, of the Sub Legion Light Infantry,
Legionary Brigade, *Judge Advocate.*
Lieut. GEORGE BASS, Adjutant to the Sub Legions of In-
fantry in the Legionary Brigade, acting as *Marshal* to the
Court,

The following orders were produced and read by the Judge Advocate :

DIVISION ORDERS.

Boston, Sept. 23, 1805.

A Division Court Martial will be held at the County Court House in Boston, on Tuesday, the 29th of October next, at 10 o'clock A. M. for the trial of Lieut. John J. Valentine of the Infantry Legionary Brigade, charged by Capt. Jacob Canterbury of the Infantry of said Brigade with disobedience of orders at various times : Also for the trial of Lieut. Nathan Bacon, of Infantry of the Legionary Brigade, charged by Capt. Samuel Curtis with disobedience of orders at different times.

President.

Lieut. Col. JOHN BARKER, 2d Regiment, 1st Brigade.

Members.

Major BARNABAS CLARK, of 2d Regiment, 1st Brigade.

Major OLIVER JOHONNOT, of Artillery Legionary Brigade.

Capt. HENRY PURKITT, of Cavalry Legionary Brigade.

Two Captains and three Subalterns of first Brigade.

Two Captains and two Subalterns of second Brigade.

Judge Advocate.

CHARLES DAVIS, Esq. Capt. Sub Legion of Light Infantry Legionary Brigade.

Adjutant BASS will attend the Court. Brigadier General WINSLOW will cause all concerned to be seasonably notified, and the Judge Advocate to be furnished with the necessary papers.

By order of the Major General.

(Signed) JOHN T. SARGENT, *A. D. C.*

Brigade Orders of Sept. 25th ; Infantry Orders of October 1st ; two Sub Legion Orders of October 7th ; all predicated on the above Division Orders of Sept. 23d, were then read ; all of which relate to the trials of Lieutenants Valentine and Bacon.

Division Orders of October 10, 1805, were read, in the words and figures following :

DIVISION ORDERS.

Boston, October 10, 1805.

Brigadier General Winslow, commanding the Legionary Brigade, having transmitted to the Major General, a complaint against Captain Joseph Loring, jun. of the Sub Legion

of Light Infantry of said Brigade, for disobedience of Brigade Orders of the 9th and 16th of September last past, and for unsoldierly and unofficer like conduct on Boston Common, on the 30th of the same month ; likewise the said Brigadier states, that he has reason to believe, that the said Captain Loring did connive at, if not abet and procure the men under his command to mutiny, and to neglect and refuse to appear on said parade, and did not make use of all his influence as their commanding officer that they might appear : All which conduct tends to the subversion of good order and military discipline in said Brigade, and is a bad example to all others to offend in like manner ; wherefore the complainant prays and requests, that such proceedings may be had in the premises, as the law directs, and that the said Captain Joseph Loring, jun. may be held to answer to the charges exhibited against him in the complaint, and such others as may be legally professed against him, and be dealt with according to law.

A Division Order, bearing date the 23d September last, appointing a Court Martial to be holden at the County Court House in Boston, on Tuesday, the 29th day of October next, at 10 o'clock A. M. whereof is President, Lieut. Col. John Barker of the second Regiment of the first Brigade ; the Major General hereby appoints the same Court for the trial of the said Captain Joseph Loring, jun. upon the charges exhibited against him by Brigadier General Winslow.

Gen. Winslow will cause the Judge Advocate to be furnished with all the necessary papers, and all concerned to be duly and legally notified.

By Order of the Major Gen. First Division.

JOHN T. SARGENT, *A. D. C.*

BRIGADE ORDERS.

Boston, October 12, 1805.

The Division Orders above copied are communicated for distribution.

Per Order of the Brigadier General.

CHARLES CLEMENT, *B. M.*

The Circuit Court of the United States was in session, and occupied the Court Room of the County Court House ; and the Jury Lobby, in which the Court Martial (owing to that circumstance) convened, not being of sufficient size to accommodate the several parties, witnesses, &c. a removal of the Court to some more commodious place became necessary. An adjournment to the Representatives Chamber in the New State House was therefore ordered, to which place the

President, Members, and Officers of the Court forthwith proceeded. The Marshal having been first directed to give notice to all concerned, of the intention of the Court.

Representatives Chamber, New State House, Boston, October 29, half past 12 o'clock, P. M.

The President, Members, and Officers, ordered on this Court Martial, were all present. Then the President and each of the Members of the Court, and the Judge Advocate in open Court, and before the Court proceeded to the trial of any officer, respectively had the oaths administered to them, as directed by the 35th Section of an Act passed June 22, 1793; which Act is entitled, "An Act for regulating and governing the Militia of the Commonwealth of Massachusetts, and for repealing all laws heretofore made for that purpose, excepting an Act, entitled an Act for establishing rules and articles for governing the troops stationed in Forts and Garrisons within this Commonwealth, and also the Militia, when called into actual service."

Lieutenants Valentine and Bacon were called, &c. Captain Joseph Loring, jun. another of the officers complained against, upon being called, observed to the Court, that he had not been legally notified of the *time* and *place* appointed for his trial; that he did not appear before the Court in his official capacity; and observed to the Judge Advocate, he did not wish his being present, and stating those facts to the Court, should be considered an appearance on his part, arising from his having had official notice of the *time* and *place* appointed for his trial. He further observed, he had written a letter to the Major General on the subject, and he considered himself and wished to be considered by the Court, merely as one of the spectators.

A letter from the Major General of the first Division was then read as follows:

Lieutenant Colonel John Barker, President of a Division Court Martial, sitting at the County Court House in Boston.

SIR,

Herein you have enclosed a letter to me from Captain Joseph Loring, jun. the officer in arrest under charges exhibited by Brigadier Gen. Winslow. You will observe, that he states in the letter, that he had not received the Division Orders of the 10th of October, appointing his trial by a Court Martial to be holden at Boston, on Tuesday, the twenty-ninth day of October. If after a due examination, the Court should be satisfied of the fact as by him stated, they will direct the Judge Advocate to furnish the said Loring with a copy of those orders, and notify him of the time and place the Court

shall adjourn to, and summon him to appear, allowing legal notice to him and all concerned.

Yours. SIMON ELLIOT, Major General first Division.

Dated Boston, October 29, 1805.

The paper enclosed in the above, was then read as follows :

Major General Elliot.

SIR,

Having received a Brigade Order of the 8th instant, putting me under arrest, for certain charges made by Brigadier Gen. Winslow, and presuming you must feel, that an officer remaining in this situation is greatly injured, not only as a soldier, but as a citizen ;—therefore am satisfied you will have the goodness to order a Court Martial by whom I may have a prompt and impartial trial. I have been informed by some officers, that a Division Order has been issued for my trial at the County Court House on the twenty-ninth instant, by the Court that sits on that day ; but as I have no official information agreeably to the Militia Law, dated June 22, 1793, Section 35, which says, “ Every Officer to be tried, shall have ten days notice given him of the time and place appointed for his trial ; also every Officer shall have a copy of the charges exhibited against him ten days before the sitting of said Court,” &c. &c.—presume it is countermanded, otherwise, there is inattention to your orders some where. Charges have been exhibited against me, and ten days have elapsed ; but the time and place, I have no information by authority agreeable to law. Therefore I am satisfied you will discharge me from this arrest, or grant my above request, by appointing a Court Martial as soon as possible. The latter I should prefer, as every officer ought, who has endeavoured to do his duty for the good of the State, as I wish to have a full and perfect investigation of my conduct when it is done agreeably to law.

With due respect, your most obedient and very humble servant,

JOSEPH LORING, *jun. Capt. of Light Infantry, per General Order.*

Audience of evidence was then moved for by the Judge Advocate, and granted by the Court.

Brigadier Gen. John Winslow, of the Legionary Brigade, was adduced as a witness on the part of the government, was sworn by the Judge Advocate, and was interrogated and answered as follows :

Question. Do you or do you not know, that Capt. Loring was furnished with a copy of the complaint exhibited against him ten days prior to the convening this Court ?

Answer. I do not know of my own knowledge ; I presume he was ; Major Clement was directed to furnish it.

Question. Do you, or do you not know, that ten days previous to the convening this Court, Captain Loring had legal notice of the time and place appointed for his trial ?

Answer. I do not know. I rather suspect he had not.

Brigade Major Charles Clement, of the Legionary Brigade, was adduced as a witness on the part of the Government ; was sworn by the Judge Advocate, and was interrogated and answered as follows :

Question. Do you, or do you not know, that Captain Loring was furnished with a copy of the complaint exhibited against him, ten days prior to the convening this Court ?

Answer. He was. I went to his house, and waited until nine o'clock in the evening. I left his house, not being able to find him. On my return home, I met him on the Turn-pike Road, and handed him the Brigade Order.

Question. By Judge Advocate to same. What Brigade Order do you refer to ?

Answer. The Order which placed him under arrest.

Question. Same to same. Did that order contain a copy of the charges ?

Answer. Yes Sir.

Question. Same to same. Do you, or do you not know, that ten days previous to the convening of this Court, Captain Loring had notice of the *time* and *place* appointed for his trial ?

Answer. The order containing notice of the time and place I handed down, but not particularly to Captain Loring.

Upon the Judge Advocate's repeating the last question to Major Clement, he replied, he could not answer that he had.

As it did not appear in evidence, that Captain Loring had been legally notified of the *time* and *place* appointed for his trial, the Court upon consultation agreed upon an adjournment until Tuesday, the 12th November, 10 o'clock, A. M. then to meet at the Representatives Chamber ; and directed the Judge Advocate to furnish Captain Loring with a copy of the Division Order, dated the 10th October ; also to give him legal notice of the time and place appointed for his trial.

The Court was ordered to be adjourned to the time and place above determined upon, which was done in due form by the Marshal.

Pending the adjournment, the following notice was delivered by the Judge Advocate to Adjutant Bass, to be handed according to its direction.

Boston, Oct. 29, 1805.

Captain Joseph Loring, jun.

SIR,

I am directed by the Court Martial, now in session in this place, to forward to you a copy of a Division Order, under date of the tenth instant, which copy is enclosed. I am further commanded to notify you of the time and place appointed for your trial, on the complaint, which has been exhibited against you by Brigadier General Winslow. In obedience to which last mentioned command, you are hereby notified, that the aforesaid Court Martial stands adjourned until Tuesday, the twelfth day of November next, at ten o'clock, A. M. then to meet at the Representatives Chamber in the new State House, of which *time and place* I do hereby notify you, and you will please to govern yourself accordingly.

Your humble servant,

CHARLES DAVIS, *Judge Advocate of said Court Martial.*

Tuesday Morning, Nov. 12, 1805.

The Court met pursuant to adjournment. On the names of the President and Members being called, they all answered in their places. The Court was ordered to be opened, which was done in due form by the Marshal.

Capt. Loring appeared in Court, in his proper person.

The Judge Advocate then read all the proceedings of the Court, as they stand recorded.

Adjutant George Bass, of the Sub Legions of Infantry in the Legionary Brigade, was sworn by the Judge Advocate, was interrogated, and answered as follows :

Question, by Judge Advocate. Did you hand the several notices, which were given you pending the adjournment, to Captain Loring ?

Answer. Yes, I did.

The complaint exhibited against Captain Joseph Loring, jun. was read to him in the words and figures following.

To Simon Elliot, Esq. Major General of the first Division of the Militia of the Commonwealth of Massachusetts.

John Winslow, Brig. Gen. of the Legionary Brigade in the first Division of the Militia of this Commonwealth, complains against Captain Joseph Loring, jun. of the Sub Legion of Light Infantry in the Legionary Brigade in the Division aforesaid, for disobeying a Brigade Order of the ninth September,

ordering a parade on Boston Common, for review and inspection on the thirtieth of the same month ; also for disobeying a Brigade Order of the sixteenth September, directing the Sub Legion of Light Infantry to appear on the said thirtieth, with sixteen sporting cartridges, both of which orders the said Capt. Joseph Loring disobeyed ; and in an unsoldierly manner came on said parade, without any of his soldiers, and there entered a protest against said orders, by delivering to Captain John Brazier, senior officer of the Sub. Legion of Light Infantry, a paper, containing statements, as facts, which were untrue, and unofficer like for him to state, and containing objections to said orders totally contrary to their true intent and meaning. And the said Winslow further states, that he has reason to believe, that said Captain Joseph Loring, jun. did connive at, if not abet and procure the men under his command to mutiny against said orders, and to neglect and refuse to appear on said parade to discharge their duty as soldiers on said day, agreeably to the spirit and intent of said orders, and did not make use of all his influence as their Commanding Officer, that they might appear ; all which conduct tends to the subversion of good order and military discipline in said Brigade, and is a bad example to all others to offend in like manner. Wherefore your complainant prays and requests, that such proceedings may be had in the premises, as the Law directs ; and that the said Capt. Joseph Loring, jun. aforesaid, may be held to answer to the charges exhibited against him in this complaint, and such others as may be legally proffered against him, and be dealt with according to Law.

(Dated) *Boston, Oct. 8th, 1805.*

(Signed) JOHN WINSLOW, *Brig. Gen. Leg. Brig. 1st Div.*

The Judge Advocate then asked Capt. Joseph Loring, jun. whether he were guilty or not guilty of the charges alleged against him in the above recited complaint ; Capt. Loring asked, if Gen. Winslow intended, that the latter part of the complaint, to wit, that part or clause beginning in these words, " And the said Winslow further states, that he has reason to believe," &c. would be considered as one of the charges. Gen. Winslow observed, he meant and intended that part to be a charge against Capt. Loring, and he expected to support that part as a charge by evidence.

Capt. Loring then handed a paper, containing as follows :—
To the first charge I answer, I am not guilty. To the second charge I answer, I am not guilty. To the third charge I answer, I did make a protest against the arrangement of the day, so far as it respected my rank in placing me below

certain Captains, the dates of whose commissions was posterior to mine. But I utterly deny I am guilty of making in that protest any statement, false, or unsoldierlike for me to make. To the fourth charge, I answer, I am not guilty.

Capt. Loring was then asked by the Judge Advocate, if he had any objection to make against any one or more of the Officers intended to compose the Court Martial for his trial, why he or they should not sit as members. He answered, that he had. He was then directed to produce his cause of challenge in writing, that, that part of the Court, not objected to, might decide thereon. Capt. Loring produced a paper, which was read as follows : I object to Capt. Henry Purkitt's sitting on my trial ; because he has prejudged my cause without hearing evidence, and has expressed his conviction out of Court, that I ought to be found guilty. I respect him as a Soldier, but cannot consent on this occasion to accept him as my Judge. If the Court require it, I will produce evidence of Capt. Purkitt's having prejudged my cause.

JOSEPH LORING, jun. *Captain.*

The Court directed Capt. Loring to adduce what evidence he had in support of his challenge. Mr. James Liswell was adduced as a witness by Capt. Loring, was sworn by the Judge Advocate, was interrogated and answered as follows :

Question, by Capt. Loring. Did you hear Capt. Purkitt say, that I behaved improperly on the parade of the 30th Sept. in going on without my men ?

Answer. He did not say any thing about that.

Question, same to same. Did you hear Capt. Purkitt say I had done wrong, and ought to be broke ?

Answer. Yes Sir, I did.

Mr. Samuel Duncan, Hallowell, was adduced as a witness by Capt. Loring, was sworn by the Judge Advocate, was interrogated and answered as follows :

Question, by Capt. Loring. Did you, in conversation with Capt. Henry Purkitt, respecting my arrest and conduct on the 30th Sept. last, hear him say, I had done wrong and ought to be broke ?

Answer. I heard him say these words as nigh as I can recollect, that was, that Capt. Loring had done wrong, and he said furthermore, that if so be such doings were allowed, he hoped there would be a standing army.

Question, by Judge Advocate, to same. Did Captain Purkitt say, he *hoped* or *expected* a standing army would be necessary, if such proceedings were allowed ?

Answer. He hoped—I think those were the words.

The Court observed, it would take the cause of challenge, and the evidence adduced in its support, into consideration.

Capt. Loring then observed to the Court, that he had some objections reduced to writing, against the Judge Advocate, which, as they affected that gentleman, he would with permission read himself. With the consent of the Court and Judge Advocate, he read the paper, which is as follows :

To the President and Members of the Court Martial, now sitting at Boston.

I object to Charles Davis, Esq. as Judge Advocate ; because I consider him *interested* in the event of my trial. There is a competition for rank between him and myself, which must be settled favourably for him, if the result of this trial is unfavourable to me. By the Court's leave I will state, that Charles Davis, Esq. Captain of the Boston Light Infantry, was elected and commissioned to the command of that company many months subsequent to the date of my election and commission, as Captain of the Washington Infantry, then so called, and that accordingly whenever our respective companies paraded in the line together, I took the undisputed precedence of him. Notwithstanding this, an order from the Executive has been issued, whereby Capt. Davis has been ordered to take rank from a period a few months previous to the date of my commission, and about two years previous to the date of that, by virtue of which he now commands. Against this order I have in the most respectful manner remonstrated to his Excellency the Commander in Chief, and I will not permit myself to doubt, but I shall be reinstated in my rank, and that an order from the Executive will soon be issued, that in obedience to the Militia Law—*all Officers shall take rank solely from the date of their commissions*, except when two commissions are of equal grade and date, in which case their precedence shall be determined by lot. Although I believe Capt. Davis, in cases where he is totally disinterested, to be as impartial as other men, yet in this case I cannot but consider him as Judge and Advocate in his own cause.

JOSEPH LORING, jun. *Captain.*

Boston, Nov. 12th, 1805.

BOSTON, Nov. 12th, 1805.

The Court then took Capt. Loring's challenge of Captain Henry Purkitt, together with the evidence adduced in its support, into consideration, and after full and mature deliberation, decided that the challenge was not supported, and that Captain Henry Purkitt should retain his seat as one of the Members of the Court.

Boston, Nov. 12th, 1805.

The Court having taken into consideration the paper offered by Capt. Loring, containing objections against the Judge Advocate, are of opinion, that it is not a paper for them to act and determine upon. They therefore direct the Judge Advocate to give Capt. Loring notice of their opinion, and further to suggest to him, that the application should have been made, or should now be made to the Major General, under whose orders the Court is convened.

The Court was ordered to be adjourned until Wednesday, the 13th inst. at 10 o'clock, A. M. Then to meet at this place, which was done in due form by the Marshal.

Representatives Chamber, Wednesday, Nov. 13th, 1805.

The Court met agreeably to adjournment, and all answered in their places, when their names were called. The Court was ordered to be opened, which was done in due form by the Marshal.

Capt. Loring appeared in Court in his proper person.

The following proceedings were then had respecting him.

Boston, Nov. 13th, 1805.

It appearing to the Court here, that Capt. Loring has received official notice [of its opinion and direction respecting his objection to the Judge Advocate] the Court does direct the Judge Advocate to inform him, that it will not proceed to his trial until he has had a reasonable opportunity to make application to the Major General concerning his objection to the Judge Advocate. All which direction, &c. was immediately complied with, and Capt. Loring was furnished with the directions and information in writing, by the Marshal's giving them to him in Court.

Thursday, Nov. 14th, 1805. The following proceedings relating to Capt. Loring were had.

Capt. Loring appeared in Court in his proper person. A letter, of which the following is a copy, was handed by the President to the Judge Advocate, with a direction to read it to the Court. It was read as follows :

To Lieutenant Colonel John Barker, President of a Division Court Martial, sitting at the State House in Boston—

SIR,

I have received a letter from Capt. Davis, the Judge Advocate, and herein enclose it, in which he informs me, that a cer-

tain paper has been handed the Court from Capt. Joseph Loring, jun. containing certain allegations and statements tending to shew his opinion and objections against Capt. Davis' acting as Judge Advocate on his trial, and that the Court did not deem it a proper subject for them to act upon, and referred him to me. No communication has been made to me by Capt. Loring on the subject.

It appears by the enclosed, that Capt. Davis is very desirous to be excused from performing the duties of Judge Advocate. If the Court upon inquiry shall find that Captain Loring still retains his objections, you will please to give me information thereof, that I may adopt such measures as the nature of the case may require.

(Dated) *Boston, Nov. 14, 1805.*

(Signed) SIMON ELLIOT, *Major Gen. 1st Division Massachusetts Militia.*

The letter enclosed in the above was then read, and is as follows :

Boston, Nov. 14, 1805.

Hon. General Elliot.

SIR,

Captain Joseph Loring, one of the officers ordered for trial by the Court Martial, now in session, has offered certain objections against my acting as Judge Advocate on his trial. The objections appear to be founded upon a *supposed* interest I have in the event of his trial. He alleges "there is a competition for rank between him and myself." I know not of such competition; at least, there is none on my part. The paper, containing Capt. Loring's reasons, and objections was considered and decided by the Court, not to be a subject on which it was authorized to act. The Court, however, referred him to you, as the officer, by whose orders and authority the Court was convened, and gave him reasonable time to make his application, and offer his objections to you. I am sensible the statements, which Captain Loring made in the paper he offered the Court are *incorrect*; yet am I very desirous of being excused from serving as Judge Advocate on his trial. And although nothing has heretofore occurred between him and myself, which can add to or diminish from the innocence or criminality of the conduct imputed to and charged against him, still I cannot, with a proper regard to my own feelings, omit to urge my request, that you would excuse me from the duties of Judge Advocate on his trial, that my hon-

our may not be attempted to be sullied by ill founded and groundless suspicion.

Yours, most respectfully and obediently at command,
CHARLES DAVIS, *Judge Advocate.*

Immediately upon the above papers being read, Captain Loring produced the two following papers, which were read as follows :

Mr. President, and Gentlemen of the Court,

Having been called on by the Judge Advocate to make any reasonable objections to any of the Court, I have availed myself of the privilege, which I thought was intended me. I made objections to Captain Purkitt on the ground of his having prejudged my cause *out of Court*, before he had in a judicial manner heard the evidence on both sides the question.

I produced, what I deemed sufficient to support my objection ; but as the Court have overruled it, and determined that Captain Purkitt shall sit, it only remains for me to bow submissive to their decision, knowing that this Honorable Court are bound to consider me innocent, till I am proved in *Court* by legal testimony to be guilty, and confident that no evidence can be produced, by my prosecutor, sufficient to convict me ; provided his evidence against me is weighed in that impartial scale, which is becoming this Honorable Court.

(Dated) *Boston, Nov. 14, 1805.*

(Signed) JOSEPH LORING, jun. *Capt.*

Mr. President, and Gentlemen of the Court,

Having been called on by the Judge Advocate to make objections to any of the Court, I have availed myself of that privilege ; and having (as I conceived it my right) made objections to Charles Davis, Esq. as Judge Advocate ; and it having been determined by the Court, that they cannot with propriety take those objections into consideration, so as to act definitively upon them ; but having been referred to the Major General, by whom the Court and Judge Advocate were appointed ; I feel compelled to observe to this Honorable Court, that the competition for rank between Captain Davis and myself, which was the reason of my objection, must have been known to the Major General as well before the Judge Advocate was appointed, as it can possibly be now. I therefore wave the privilege proffered me, by this Honorable Court, of applying to the Major General on the subject. I bow submissive to the decision of the Court, and am ready to meet the charges exhibited against me, hoping that the event

of my trial may do away any improper prejudices, that may exist on the minds of any individual against me.

(Dated) *Boston, Nov. 14, 1805.*

(Signed) JOSEPH LORING, jun. *Capt.*

The Court ordered the following question to be asked Captain Loring.

Do you still retain your objections against the Judge Advocate?

To which question Capt. Loring answered in writing as follows :

Capt. Loring submits to be tried by the Court, as it is now composed, and with the present Judge Advocate.

The Court was adjourned until Friday, Nov. 15, 1805, 10 o'clock, A. M. then to meet at this place.

Representatives Chamber ; Boston, Friday, Nov. 15, 1805.

The Court met pursuant to adjournment. On the names of the President and Members being called, they all answered in their places. The Court was ordered to be opened, which was done in due form by the Marshal.

Captain Loring appeared in Court in his proper person.

The Court not being satisfied with the answers Capt. Loring had made to questions relating to his objections to the Judge Advocate, considering them as not being *explicit*, directed the following question to be asked him.

Capt. Loring—The Court direct the following question to be asked you ; you will give an *explicit* answer one way or the other. * Do you, or do you not withdraw all the objections you have made against the Judge Advocate's acting in that capacity on your trial?

To which Capt. Loring answered in writing as follows :
To the President and the Court—I am anxious for my trial as soon as possible without any further delay. I consider my objections are overruled by the Court, and I presume every preliminary is settled. It is not for me to withdraw objections, which the Court have overruled.

(Dated) *Boston, Nov. 15th, 1805.*

(Signed) JOSEPH LORING, jun. *Captain.*

The Court took the above answer into consideration, and made the following communication to the Major General on the subject.

Boston, Nov. 15th, 1805.

Hon. Gen. ELLIOT—

SIR,

The Court Martial now sitting, not being satisfied with Capt. Loring's answers to the questions asked him respecting his objections to the Judge Advocate; considering them as not being so explicit as they ought to be, upon consultation and full deliberation, this morning directed the following question to be put to him, accompanied with a direction to him to give an *explicit* answer one way or the other.

Friday, Nov. 15th, 1805, 11 o'clock, A. M.

Capt. Loring—The Court direct the following question to be asked you. You will give an *explicit answer* one way or the other. Do you or do you not withdraw all the objections you have made against the Judge Advocate's acting in that capacity on your trial?

Capt. Loring answered in writing as follows.

To the President and the Court.

I am anxious for my trial as soon as possible without any further delay.

I consider my objections are overruled by the Court, and I presume every preliminary is settled. It is not for me to withdraw objections, which the Court have overruled.

(Signed) JOSEPH LORING, jun. *Captain.*

The Court would observe, that they *have not overruled* the objections Capt. Loring offered; that *in truth* they did not act upon them any further than to *suggest* to him to apply to you with the objections. The Court have taken the above answer of Capt. Loring into consideration, and are of opinion, *as he refuses to answer in any other manner*, that he does not withdraw his objections to the Judge Advocate. The Court would further observe, that under these circumstances it is the anxious wish and desire of Capt. Davis to be excused from acting as Judge Advocate on Capt. Loring's trial. The Court wait your decision on the above.

In behalf and by the unanimous request of the Court,

(Signed) JOHN BARKER, *President.*

To which communication the Major General replied as follows.

To the President of the Court Martial sitting at the State House.

SIR,

Your communication to me upon the subject of certain questions, put by the Court, this morning, to Capt. Loring, relative to his objections to Capt. Davis' acting as Judge Advocate on his trial, and his answer thereto, I have duly considered, and deeply regret that the progress of the Court has met with such impediments. Agreeably to Capt. Davis' anxious wish and desire, and under existing circumstances, I am induced to excuse him from acting as Judge Advocate on Capt. Loring's trial.

I shall immediately appoint a person to act in his place. The Court will adjourn, giving a suitable time, and notify me thereof.

(Dated) *Boston, Nov. 15th, 1805.*

(Signed) SIMON ELLIOT, *Maj. Gen. 1st Div.*

The Court upon consultation agreed upon an adjournment until Tuesday the 19th November, at 11 o'clock, A. M. then to meet at this place. To which time and place the Court was adjourned in due form by the Marshal.

Tuesday morning, Nov. 19th, 1805.

The Court met agreeably to adjournment, and all answered in their places. The Court was opened in due form by the Marshal. Captain Loring appeared in Court in his proper person.

Henry M. Lisle appeared in Court and produced a Division Order, by which it appeared he was appointed to act as Judge Advocate on the trial of Capt. Loring, in the place of Captain Davis, who was discharged at his own request from being Judge Advocate on Capt. Loring's trial.

I certify, that the within are true copies of the proceedings of the Court Martial, so far as they have been had, relative to the trial of Capt. Joseph Loring, jun.

CHARLES DAVIS, *Judge Advocate.*

Boston, Nov, 19th, 1805.

We certify, that the above and foregoing are true copies of the proceedings had by the Court respecting Capt. Loring's trial, so far as they have been had to this day.

JOHN BARKER; *President*, BARNABAS CLARK, OLIVER JOHONNOT, WILLIAM BARNES, HENRY PURKITT, ADAM KINSLEY, MICHAEL HARRIS, jun. JOHN ROBINSON, JOHN PRATT, DAVID SHEPARD, ELISHA FRENCH, jun. LEWIS FISHER, WILLIAM TURNER.

Representatives Chamber, Boston, Tuesday, November 19, 1805.

The Court met agreeably to adjournment, and on being called, all answered in their places. Captain Joseph Loring, jun. appeared in his proper person, and on being called answered.

The Court was then opened in due form by the Marshal. Henry M. Lisle, Adjutant of Cavalry in the first Brigade of the first Division, then produced to the Court an order from the Major General of the First Division appointing him Judge Advocate to act, vice Charles Davis, Esq. excused, on the trial of Captain Joseph Loring, jun. in the words and figures following.

DIVISION ORDERS.

Boston, November 15, 1805.

Henry M. Lisle, Esq. Adjutant of the Squadron of Cavalry in the first Brigade, is appointed to act as Judge Advocate, vice Charles Davis, Esq. who at his own request is excused from acting in that capacity on the trial of Captain Joseph Loring, jun. The Division Court Martial, whereof Lt. Col. John Barker is President, having adjourned to meet at the State House in Boston, on Tuesday the nineteenth instant, at eleven o'clock, A. M. Henry M. Lisle, Esq. is required to give his punctual attendance at the time and place of adjournment.

(Signed) SIMON ELLIOT, *Major General first Division.*
Brigadier GEN. BADLAM.

(COPY)

Transmitted by order Brigadier General,

S. M. THAYER, *B. Major 1st Brigade.*

To HENRY M. LISLE, Esq.

Henry M. Lisle was then sworn as Judge Advocate, agreeably to law, by the President of the Court.

The proceedings of the Court were then read, as they respect Capt. Joseph Loring, jun. so far as they have heretofore been had.

The Judge Advocate then inquired of Captain Loring whether he had any challenge to offer against any of the Court, as it then stood composed ; to which he answered, No, excepting what I have heretofore done.

The Judge Advocate then demanded of Captain Loring whether he had any desire to commence his trial anew, or preferred it as the records now stood by the former Judge Advocate's certificate, viz. those of Charles Davis, Esq. making them a part of the record in this case.

To which he replied : I prefer going on with the trial, as it stands, making the records of the former Judge Advocate a part of it.

The original Brigade Orders of the 9th and 16th of September last were then produced by General John Winslow : thereon,

Question, by Judge Advocate to General Winslow, (being sworn.) Are the Brigade Orders at this time produced by you, the original orders at the 9th and 16th of September last ?

Answer. They are.

Those orders were then read by the Judge Advocate to the Court in the words and figures following, viz.

BRIGADE ORDERS.

Boston, September 9th, 1805.

Captain Brazer will order the Sub Legion of Light Infantry under his command to parade on Boston Common for Review and Inspection, on Monday the 30th of September, the line to be formed at 10 o'clock, A. M. at which time the inspection will commence, and be attended to with the strictest scrutiny. It is expected that both Officers and Soldiers will be equipped in every respect according to law. The duty of the day will be communicated in after orders. The Brigadier requests the Officers under your command to meet him at James Vila's, on the 20th instant, at 7 o'clock, P. M.

Per Order Brigadier General.

CHARLES CLEMENT, B. M.

*Capt. John Brazer, Sen'r. Capt. Sub }
Legion of Light Infantry. }*

BRIGADE ORDERS.

Boston, September 16th, 1805.

The troops for duty under your command, the 30th instant, will appear without any cartridges with Ball ; in lieu thereof they will each man furnish himself with sixteen sporting cartridges in addition to what will be furnished by the town.

Per Order of the Brigadier General.

CHARLES CLEMENT, B. M.

*Capt. John Brazer, Sen'r. Officer }
Sub Legion of Light Infantry. }*

Question, by Judge Advocate to General Winslow.

Were those orders issued and transmitted by you to Capt. Brazer ?

Answer. They were.

Question. Same to same. By whom did you transmit them ?

Answer. By the Brigade Major.

Question. Same to same. Who is your Brigade Major ?

Answer. Charles Clement. I delivered them to him myself, and directed him to pass them down.

Charles Clement, the Brigade Major, was then sworn, and interrogated, and answered as follows :

Question, by Judge Advocate. Did you receive orders of Brigade from General Winslow of 9th and 16th of September last, to hand down ?

Answer. I did.

Question. Same to same. Do you recollect the purport of those orders well enough to say whether they were a copy of those just read ?

Answer. I do ; they were.

Question. Same to same. To whom were those orders directed ?

Answer. They were directed to Captain Brazer, as senior Captain of Sub Legion of Light Infantry.

Question. Same to same. Did you deliver said orders to said Captain Brazer ?

Answer. I did.

Captain John Brazer was then sworn, interrogated, and answered as follows :

Question, by Judge Advocate. Did you receive Brigade Orders of the 9th and 16th of September last, from Brigade Major Charles Clement, issued by Brigadier General Winslow ?

Answer. I did.

Question. Same to same. Were those orders such as have been just read by me from the original manuscript ?

Answer. Yes, Sir.

Question. Same to same. Did you hand those orders down to Captain Joseph Loring, jun. ?

Answer. I sent them down by an Officer. I presume he delivered them.

Question. Same to same. What Officer did you send them by ?

Answer. Having no Adjutant, by an orderly Sergeant, James Ridgway, by name.

The original Brigade Order of duties for the 30th of September last was produced by General Winslow : thereon,
Question, by Judge Advocate to General Winslow.

Is this order for the duties of 30th September last, the original ?

Answer. It is.

The order was then read by the Judge Advocate to the Court in the words and figures following.

BRIGADE ORDERS.

For 30th September, 1805.

Lieutenant Col. Badger will order one gun from the Artillery at 10 o'clock, at which time the line will be formed immediately ; the several Officers will take care to preserve a proper distance between their commands ; on signal of two guns from the Artillery the whole Brigade will wheel by Companies to the right for inspection, and have their rolls ready for delivery. Lieutenant Col. Badger has leave to dispense with the Chelsea Company's appearance in town on that day. After the review has taken place, the troops will be dismissed for refreshment ; no man, neither Officer nor Soldier, will be allowed to be at a greater distance from the Common, than within hearing of the long roll. At a signal of one gun from the Artillery, every man, both Officers and Soldiers, will take their places in the line. Captain Davis' Company of Light Infantry, one Company of Artillery with their pieces, the third Sub Legion of Infantry under Major Stodder, with Captain Dean's Company of Infantry from the Sub Legion will march under the command of Lieut. Col. Badger for the Heights of South Boston. The remainder of the troops will tarry on the ground and proceed as ordered, as it is intended to represent an engagement. The Officers commanding Platoons will be very attentive to their men, and not allow them to hurry in any of their movements, and be very particular in obeying the orders they may receive from their superior Officers, as every thing

depends on attention. The Brigadier flatters himself that such perfect attention and good order will be observed, both by Officers and Men, that they will receive his most hearty thanks, as well as the applauses of those who may be spectators, among whom there will be probably many judges of military discipline.

By Order of the Brigadier General,
CHARLES CLEMENT, *Brigade Inspector.*

To Lieut. Col. Badger, Major Johnnot, }
Capt. Brazer, Capt. Purkitt. }

Question, by Judge Advocate to General Winslow. As this order bears no date, when was it issued, and for what purposes?

Answer. It was issued seven or eight days prior to the parade of 30th September last, as an order of duties for that day.

Question, by Judge Advocate to Captain John Brazer. Did you receive this last order?

Answer. I received from the Brigade Major, an order similar to the one last read; but I think it was either the day before, or the morning of the parade.

James Ridgway was then sworn, interrogated, and answered as follows:

Question, by Judge Advocate. Did you receive orders of the 9th and 16th Sept. last, from Captain Brazer, to communicate to Captain Joseph Loring, jun.?

Answer. I received a paper from Captain Brazer for Captain Loring. I don't know the contents of it.

Question. Same to same. Did you receive it as orderly Sergeant, and did Captain Brazer inform you it was orders to be delivered to Captain Loring?

Answer. I received it as orderly Sergeant, with other papers, directed to Captains Messenger, Davis, and Loring. Captain Brazer did not tell me they were orders. I delivered all but Captain Loring's, and left his as I was directed, at his father's house.

Question. Same to same. Were those papers sealed?

Answer. Yes, Sir.

Question, by Judge Advocate to Captain John Brazer. At the time you delivered Captain Loring's order to James Ridgway, did you at the same time give him others for Captains Messenger and Davis, and were those orders sealed?

Answer. Yes, Sir.

Captain Charles Davis was then sworn, interrogated, and answered as follows:

Question, by Judge Advocate. Did you receive your orders of 9th and 16th Sept. from James Ridgway?

Answer. I did.

Question, by Judge Advocate to Captain John Brazer. Did you pass down the orders for the duties of 30th September?

Answer. I did not.

Question, by same, to Captain Charles Davis. Did you receive your orders for duties of 30th September?

Answer. I cannot at present say positively that I did.

Captain John Brazer here stated, that he had misconceived what order had been referred to, supposing allusion was had, not to the one intended, but another, which was issued on the very day of parade; he therefore now says he regularly received the order for the duties of the 30th September last. And Captain Joseph Loring, jun. also acknowledges the regular receipt of that, and those of 9th and 16th September last, in open Court.

The Judge Advocate therefore observed, that having exhibited the original orders and evidence of the regular reception of those orders, he should proceed to show the disobedience of those orders, and the unofficer and unsoldierlike manner in which Captain Loring came on to parade the 30th of September last, as charged in the complaint.

Question, by Judge Advocate to Captain Brazer. Were you on the field on 30th September last, when Captain Loring came on parade?

Answer. I was.

Question. Same to same. In what manner did he come, and by whom was he attended or accompanied?

Answer. He came on the field with one Lieutenant, four Sergeants, drum and fife. His other commissioned officer acted as Adjutant for the day to that Sub Legion.

Question. Same to same. Did you order him to fall in the line?

Answer. I did.

Question. Same to same. What reply and observations did he make to you?

Answer. He went into the line, but made no reply or observations, as I recollect.

Question. Same to same. Did Captain Loring hand you his commission before he went into the line?

Answer. He did.

Question. Same to same. Did he make any remark at the time he handed you his commission?

Answer. He demanded of me a shew of commissions of the officers in the Sub Legion, and I ordered them to produce

them, which they did, and I read them to Captain Loring and others.

Question. Same to same. Do you recollect when Brigadier General Winslow came on parade?

Answer. I do.

Question. Same to same. In what situation was Captain Loring then?

Answer. Captain Loring was then in the front of the line, which was then forming.

Question. Same to same. Do you recollect any conversation, which then passed between Captain Loring and General Winslow?

Answer. I do. When the Brigadier came on the field, he asked me whether the line was formed. General Winslow asked me how Captain Loring came to come on the field in the manner he was. I told him I had received a note from Captain Loring, stating the reasons why he come on in the manner he did. He in that note excused himself for coming on the field so late, by saying he had waited half an hour longer on his parade, but none of his men came; and he came with non-commissioned officers, and drum and fife. General Winslow ordered me to call him up to us out of the line, which I did. When he came up, General Winslow asked him how he came in that manner. He replied much the same as he did to me, I presume; I don't recollect the words. General Winslow told him he had no further service for him. Then Captain Loring went out of the line, and fell back into the rear; after which he brought me a paper, which I delivered to General Winslow, and which is set forth in the complaint as a protest.

Question. Same to same. At what time of the day did you hand that protest to General Winslow?

Answer. About half past ten o'clock, I think.

Question. Same to same. Don't you recollect handing it to General Winslow at dinner time in the house?

Answer. I do not; it strikes me I handed it to him on the field. I may be mistaken; I believe General Winslow read it while we were at refreshment at the house.

The protest was then shewn to Captain Brazer by Judge Advocate, with this question, viz. Is this the protest you mean?

Answer. I know the paper; I have no doubt of its being the same.

The protest was then read by the Judge Advocate to the Court, in the words and figures following, viz.

I, the subscriber, commanding a company by voluntary enlistment in the Legionary Brigade, do present this protest against the Orders issued for the arrangement of this day's review and inspection of the Brigade, so far as they degrade my commission and rank, by placing me under the command or rank of Captain Daniel Messenger and Captain Charles Davis.

1st. Because the Constitution says, Mass. law, folio 34, "And no officer duly commissioned to command in the Militia, shall be removed from his office, but by the address of both houses to the Governor, or by fair trial in Court Martial," &c.

2d. Because, being duly commissioned to command, the date of said commission must demand a higher station in rank, than is now appointed me; for the law expressly says, that every officer shall rank by the date thereof. And my *election* to the *volunteer* company I now command being regular, and returns made agreeable to law, received my commission, dated August 15, 1803, signed by his Excellency Caleb Strong, Esq. Governor of the State, agreeable thereto. Therefore I have a right to claim a higher rank than said Captain Daniel Messenger, and Captain Charles Davis, who ought to rank under commissions dated when *elected*, or those dated June 20, 1805, as all others of a superior date to mine the law does not contemplate, as they are not agreeable to said officers' elections and returns made by the companies they now command. And in my opinion it is contrary to the United States and State laws for any commission to give rank above mine, except by their date, and those dated agreeable to elections made by the company the officer commands. Therefore, do now, for the above, among many other reasons, protest against the orders that command me to take a station or rank contrary to what my commission, dated August 15, 1803, claims for me and my company, and against all proceedings of any officer whatever that degrades me, or my officers' rank, in any one point or manner derogatory to the honour of officers, who have done their duty for the good of the State.

JOSEPH LORING, jun. *Captain Light Infantry, per General Order.*

Boston, September 30, 1805.

To the officer, who commands this 30th September, 1805, this is respectfully sent.

Question, by Defendant to Captain John Brazer. What was the station you ordered me to take in the line of the Light Infantry?

Answer. I ordered you to take the station that the General Order placed you in ; that was, below Captain Davis and Captain Messenger.

Question. Same to same. Was not the station into which you ordered me inferior to that to which you assigned me a year ago on parade ?

Answer. It was.

Question. Same to same. Did not my commission bear a date earlier than that of Captains Messenger and Davis, below whom you ordered me to take station ?

Answer. Captain Loring's commission, in the eye I look on commissions, was dated earlier than either of theirs.

Question. Same to same. Did I send up the protest till after I was ordered below Captain Davis ?

Answer. He did not.

Question. Same to same. Was not the Sub. Legion of Light Infantry composed of the same companies this year, that it was the last year ?

Answer. It was.

Question. Same to same. Did I offer my protest against the place you had assigned me, till after General Winslow had ordered me to quit the parade ?

Answer. No.

Question. Same to same. Did I not march out of the line with silent music, and halt in the rear of the line before I sent the protest ?

Answer. You did.

Question. Same to same. Did I not come on the parade in as soldierly a manner as the smallness of my company would admit ; and did I not quit it in as respectful a manner as possible after the Brigadier General had ordered me to leave the parade entirely ?

The Judge Advocate objected to the last question being asked in the manner stated, because it required not facts from the witness, but his opinion and judgment on one of the charges exhibited against Captain Loring in the complaint, on which the Court are to give judgment, and not a witness.

The President of the Court observed, it would be necessary to new modify the question, if Captain Loring wished to ask it. Captain Loring then desired leave to withdraw it.

Question, by Judge Advocate to Captain Brazer. Do you know that Captain Messenger has done duty as a Captain under you in the Light Infantry before Captain Loring's company was raised ?

Answer. He was in the line with me before Captain Loring's company was raised. I was the senior officer; I have been about ten years, he I presume about five years.

Question. Same to same. Have you always commanded the Sub Legion when on the field, since the Cadets left it?

Answer. I believe not.

Question. Same to same. Who did, when you did not?

Answer. That is a kind of mixt business; General Winslow I presume did, when I did not.

Question, by the President of the Court to General Winslow. How long have the Cadets been detached?

Answer. I think it was in 1800.

At fifteen minutes before 3 o'clock, P. M. the Court adjourned until 10 o'clock, A. M. on the morrow.

Representatives Chamber, Boston, Wednesday, Nov. 20, 1805.

The Court met agreeably to adjournment; and on being called, all answered in their places. The Court was then opened by the Marshal. Captain Joseph Loring, jun. on being called, appeared in his proper person, and answered. The proceedings of the preceding day were read to the Court by the Judge Advocate.

General Winslow then informed the Court, in answer to the question last asked him yesterday, that he had ascertained that the Cadets were detached from the Sub Legion of Light Infantry on the 18th October, 1799.

Captain John Brazer again interrogated, and answered as follows:

Question, by Judge Advocate. If in the eye you look on commissions, Captain Loring's commission was dated earlier than either Captain Messenger's or Captain Davis's, why did you not give Captain Loring his rank as supposed by you in the Sub Legion?

Answer. Because I had a General Order to the contrary.

Question. Same to same. Did you inform Captain Loring that you had that General Order?

Answer. I did.

Question. Same to same. When did you first inform Captain Loring you had that order?

Answer. About the time I received it.

Question. Same to same. When did you receive it?

Answer. I received it on the sixth day of July last. It is dated on that day, and I passed it down on the tenth to Cap-

tain Loring. I presume it might have been the eighth when I received it.

The original order was then produced by General Winslow.

Question, by Judge Advocate to General Winslow. Is this the original order last mentioned by Captain Brazer, a copy of which he says he received and passed down to Captain Loring?

Answer. It is the original, which I received.

The order was then read by the Judge Advocate to the Court, in the words and figures following, viz.

COMMONWEALTH OF MASSACHUSETTS.

GENERAL ORDERS.

Head Quarters, June 20, 1805.

The Commander in Chief, being authorized to complete the organization of the Legionary Brigade in Boston in the first Division of the Militia, orders that the Sub Legion of Light Infantry hereafter consist of the aftermentioned four light companies, raised at large in Boston, viz. the Company commanded by Captain John Brazer, the Company commanded by Captain Charles Davis, the Company commanded by Capt. Daniel Messenger, and the Company commanded by Capt. Joseph Loring, junr. the said Captain Davis, to receive a new Commission as Capt. of Light Infantry, and to take rank from the date of his former Commission, as Captain in the Legionary Infantry; Captain Messenger will also receive a new Commission, as Captain of Light Infantry, and to take rank from the date of his former Commission as Captain in the Legionary Infantry, and Captain Loring will also receive a new Commission as Captain of Light Infantry, and to take rank from the date of his present Commission. And the Major General will issue his orders agreeably to Law for the election of a Major to command said Legion of Light Infantry.

By Order of the Commander in Chief,

(Signed) WILLIAM DONNISON, *Adj. Gen.*

FIRST DIVISION.

DIVISION ORDERS.

Boston, July 4th, 1805.

Brigadier General Winslow will take due notice of the General Orders above copied, also to augment the number of companies of Infantry agreeably to the General Order of 1793,

and cause all vacancies in his Brigade to be filled up, and returns made on or before the seventh of August next.

Per order Major General, 1st Division,

JOHN T. SARGENT, *A. D. C.*

BRIGADE ORDERS.

Boston, July 6, 1805.

In pursuance of General Orders of 20th June, and Division Orders of 4th July, the Brigadier General orders the Officers of the following Companies to meet him at the house of James Vila, Court Street, on Monday, the 22d instant, at 8 o'clock, P. M. viz. Boston Fusilers, Winslow Blues, Boston Light Infantry, and the Washington Infantry, in uniform, for the purpose of choosing a Major to command said Sub Legion.

By Order Brig. Gen. Legionary Brig.

CHARLES CLEMENT, *Brig. Maj.*

To Capt. John Brazer.

Question, by Judge Advocate to Captain Brazer. Are the orders I have just read the same as were received by you, and handed down to Captain Loring?

Answer. It is.

Question, by Judge Advocate to General Winslow. Is the Brigade Order of July 6, 1805, now produced by you, the original which was predicated and issued by you upon the General Order last read?

Answer. It is.

Question, by one of the Court to General Winslow. Did Captain Loring receive his Commission agreeably to the General Orders?

Answer. I suppose the Brigade Major delivered it to Captain Brazer; Commissions go through his hands; I don't know.

Same question by same to Captain John Brazer, who answered. I presume he did; I sent them down to him, Capt. Messenger, and Capt. Davis.

Question, by Judge Advocate to Captain Brazer. Had you not several conversations with Captain Loring respecting the parade of 30th September last, prior to that day?

Answer. I don't recollect that I had any conversations with him at all; but I received a letter. The letter was then handed to the Judge Advocate, who read it to the Court in the words and figures following:

Captain JOHN BRAZER—

Boston, September 18th, 1805.

Sir,

Having received Brigade Orders of the 16th inst. handed down by you, dispensing with Powder and Ball on the 30th instant, the day of Review and Inspection of the Brigade, and ordering 16 cartridges for sporting besides what the law grants : I therefore wish to be informed if it is meant by this order for my men to use the powder of the ball cartridges (which the law says they shall constantly be provided with, and which they had at the last muster) for this extra purpose ; and if not, presuming the men don't furnish themselves, what fine must I demand, as I find the law don't contemplate any thing of the kind, for such deficiency ? I will also thank you to inform me if Espontoons must be brought in the field.

With respect, I am your most obedient,

JOSEPH LORING, junr. *Capt. Legionary Regiment.*

Captain John Brazier, Sen. Officer Sub Leg. }
 Light Infantry Legionary Brigade. }

Question, by Judge Advocate to Captain Brazier.

Have you received any other communications, either oral or written, from Captain Loring on the subject of the parade of 30th September last ?

Answer. I have not.

Question, by Defendant to same. Did you ever return me an answer in any way to the letter which has been just read, dated 18th September last ?

Answer. I did not.

Question, by same to same. What was the reason you did not ?

Answer. Because I consulted with General Winslow, and he advised me not ; he said the order spoke for itself, and if Captain Loring did not obey it, he must take the consequences.

Question, by Defendant to General Winslow. Did I not at the meeting of the Officers at James Vila's, July 22d, 1805, present a protest against being ordered to the Sub Legion of Light Infantry, contrary to my enlistment, and because I considered myself degraded in rank ?

Answer. Captain Loring handed me a paper that evening ; I told him our meeting was for the election of a Major, and that I should receive no papers of any kind. He then requested me to take it, and look it over ; I did so, and handed it to the Major General the next day.

Question. Same to same. What orders do you refer to in your charge in the complaint exhibited against me by the phrase "said orders"?

Answer. The orders of the 9th and 16th September last.

Question. Same to same. Is the protest handed from me by Captain Brazier to you, after I was dismissed from the parade, on the 30th September, the same which you refer to in your third charge against me?

Answer. It is.

Question, by same to same. Do you mean to declare in your complaint against me, that the protest, which has been read, is against your orders of the 9th and 16th September last, ordering the parade, &c. on the 30th?

Answer. The charge will speak for itself. I expect the Court will determine that, not me.

Question. Same to same. Is there any thing contained in that protest making objections to the orders of the 9th and 16th?

The Judge Advocate queried as to the propriety of the question being asked, because the Court, and not the witness, should properly decide such a question, it being in fact, if answered, a judgment on one of the charges exhibited against the Defendant. The Court overruled the objection, and on the question being asked, General Winslow replied, that the Court would determine that.

Question. Same to same. What are the statements in the protest, which are untrue, and unofficer like for me to make?

The Judge Advocate objected to asking the question, for the same reasons he objected to the last, and thereon the Court determined that the question should not be asked.

Question, by same to same. Although I protested on the 30th September, after I was dismissed, against the arrangements of placing me in a station below what I conceived to be my right, did I not obey the orders to march into the line under Captain Messenger and Captain Davis?

Answer. I don't know what orders Captain Loring received from Captain Brazier; I conceive he did not obey mine, and should not have arrested him if I thought he had.

Question. Same to same. Did you not order me through Captain Brazier to come out of the line to meet you, and did you not dismiss me at that time?

Answer. I ordered Captain Loring to come to me by the Adjutant of the Sub Legion, Mr. Munroe, and after some conversation, I dismissed Mr. Loring out of the line for the day.

Question. Same to same. What was my station at that time in the line?

Answer. When I saw Captain Loring in the line, he had the station of the third company.

Question. Same to same. Was I not placed on 30th of October, 1804, on the left of the Sub Legion of Light Infantry?

Answer. I rather think you were.

Question. Same to same. Who was the Officer of the day on the 30th October, 1804?

Answer. I think I was.

Question. Same to same. By whose order was I placed on the left of the Light Infantry on 30th October, 1804?

Answer. I suppose by Captain Brazer's.

Question. Same to same. Were Captain Brazer's orders conformable to yours in this respect?

Answer. There was some dispute on the field that day about rank between Captain Davis and Captain Loring. Captain Brazer had determined the rank before I came up, and it was agreeably to my opinion. Captain Davis came forward, and said he would consent for that day, to avoid difficulty, and went on to do duty, but that he never would consent after that to the decision. I replied, that I thought the field was not a place to dispute rank, that they must apply elsewhere, and I did not doubt he would have justice done him.

Question. Same to same. Was you informed by Captain Brazer that I made any dispute, or that I said any thing about rank on that day?

Answer. Captain Brazer informed me there was a dispute; I did not think it could be with one.

Question. Same to same. Did you not settle my rank with Captain Brazer some time before you came on the field, 30th October, 1804?

Answer. I rather think I gave my opinion to Captain Brazer a day or two before. Captain Loring was only detached for that day.

Question. Same to same. What was that opinion given by you to Capt. Brazer before you went on the field?

Answer. That Captain Loring would outrank Captain Davis.

Question, by Judge Advocate to General Winslow. When you came on parade on 30th September last, in what situation did you find the line, and what then took place respecting Captain Loring?

Answer. On parade, the 30th September last, on Boston Common, on my coming up Winter street, found the line nearly formed, saw among a number of people who were opposite the line on the right six or eight men in uniform; on my nearer approach, and on my entering on the right of the line,

found them to be Captain Joseph Loring, jun. Lieut. Ezra Davis, with four Sergeants, and a drum and fife ; Captain Loring in a very short time came forward to Captain Brazer, who commanded the Sub Legion of Light Infantry, and handed him a paper, which I supposed was a Commission, and asked Captain Brazer some questions which I did not distinctly hear ; Captain Brazer gave him his directions, on which he marched with his Officer, four Sergeants, and drum and fife, and took post in the line. I then directed Ensign Munroe, who was doing duty as Adjutant to the Sub Legion of Light Infantry, to request Captain Loring and Lieutenant Davis to come to me. On their arriving where I could speak to them, I asked Captain Loring what orders he had received for the parade of the day. He replied, he had received the orders directing him to appear on this day, and to form the line at 10 o'clock, A. M. on the Common. I then asked Captain Loring where his men were. He said he did not know, he had ordered them to appear at 9 o'clock, and he had waited on his company parade a half an hour, but none of them appeared, and he did not choose to wait any longer for them. I then asked Captain Loring whether he commanded his men, or his men him. He answered, that he commanded his men. I replied, that I should have supposed it was directly the reverse ; that it was very extraordinary conduct, and he would hear more of it in a few days. I then told him I had no further service for him for the day ; that I did not stand in need of officers without men ; he would therefore retire out of the line.

Question, by Defendant to same. Did I not, when you dismissed me, inform you that I had my inspection roll, if you wished it ?

Answer. I believe not, I have no recollection of it.

Isaac Rhoades was then sworn, interrogated, and answered as follows.

Question, by Judge Advocate. In what capacity are you in the Militia ?

Answer. Orderly Sergeant of Capt. Joseph Loring, jun.'s company.

Question. Same to same. Where was Captain Loring's company ordered to parade on the 30th of September last ?

Answer. In front of the Green Dragon tavern.

Question. Same to same. Is that their usual place of parade ?

Answer. We have no usual place of parade. At the South End Gun house when we can have it ; we could not that morning ; sometimes at the Ropewalk.

Question. Same to same. Did you ever before parade at the Green Dragon?

Answer. The company have met at the Green Dragon, but we never were ordered to parade there before.

Question. Same to same. What have the company met there before for?

Answer. On evenings to do company business.

Question. Same to same. Did Captain Loring order the roll called on the 30th of September last?

Answer. The roll was ordered to be called by Lieutenant Davis.

Question. Same to same. Was it called?

Answer. It was.

Question. Same to same. At what time?

Answer. At the time the notification specified.

Question. Same to same. Was Captain Loring there when the roll was called?

Answer. He was not; he came one or two minutes after.

Question. Same to same. Did Captain Loring continue any time before he marched his non-commissioned officers off?

Answer. He did; an half an hour, or near.

Question, by Judge Advocate. Did Captain Loring express any surprise at finding no men there?

Answer. Captain Loring asked, when he came, if any men had been there, and if the roll had been called, and said he would wait half an hour. Did so. then said he could not make men, and must go on the field as he was.

Question. Same to same. Was not Captain Loring's company out about the 16th September last?

Answer. It was.

Question. Same to same. What was the number of rank and file?

Answer. Forty-six, I think, but won't be certain.

Question. Same to same. By whose order were they then out?

Answer. Captain Loring's.

Question. Same to same. Were they then informed that an order was out for the 30th September last?

Answer. I can't recollect that; the order was read to the company, but when I can't recollect.

Question, by same to same. Was not Captain Loring's company also out on the 17th or 18th of October last?

Answer. It was out on the 17th of October.

Question. Same to same. How many rank and file were there then?

Answer. I can't recollect.

Question. Same to same. By whose order were they then out?

Answer. Captain Loring's.

Question. Same to same. When was that order issued ?

Answer. I can't recollect.

Josiah Bacon, jun. sworn, interrogated, and answered as follows :

Question, by Judge Advocate. In what capacity do you serve in the Militia ?

Answer. As Clerk, and Sergeant to Captain Joseph Loring, junior's company.

Question. Same to same. Where was Captain Loring's company ordered to parade, on 30th September last ?

Answer. At Green Dragon Hall.

Question. Same to same. Is that their usual place of parade ?

Answer. They have no usual place of parade ; the company has paraded at Fanieul Hall, at the South End Gun house, and in front of the Rope Walk.

Question. Same to same. Can Captain Loring's company be drawn up in Green Dragon Hall ?

Answer. I don't know.

Question. Same to same. Where were they drawn up ?

Answer. In the Street front of the Hall.

Question. Same to same. Was the roll called ?

Answer. Yes, Sir.

Question. Same to same. How many of the company attended ?

Answer. The Captain, Lieut. and four Sergeants.

Question. Same to same. Was Captain Loring present when the roll was called ?

Answer. No, he was not.

Question. Same to same. Did Captain Loring express any surprise at finding no men there ?

Answer. He came and inquired if no men had been there, and directed the Drummer to go down and beat the roll.

Question. Same to same. Did you or did you not, generally attend the meetings of the company, of which you are a member, previous to the parade of the 30th September, 1805 ?

Answer. I did.

Question. Same to same. Did Captain Joseph Loring, jun. attend any meeting of the company when you was present, previous to the parade of 30th September, 1805 ?

Answer. He did.

Question. Same to same. Did you at any meeting of the company, or other time, when Captain Joseph Loring, jun. was present, hear him make any observation intimating a wish that the privates of his company might absent themselves on the 30th of September, 1805, the day of parade ?

Answer. I did not.

Question. Same to same. Did you ever hear any of Captain Loring's company say any thing respecting their wish or intention not to come out on 30th September last, in the presence and hearing of Captain Loring?

Answer. I heard some members say they should not come out, at a meeting of the company at the South Gun house; but I believe it was not in the hearing of Captain Loring, he being at another part of the Hall; and they gave as their reason, that they were so engaged in business, they preferred paying their fines.

Question. Same to same. Did not the company, or a part of it, meet and vote not to come out?

Answer. Not to my knowledge.

Question. Same to same. Have they met since the order of the 9th September without your being present?

Answer. Not to my knowledge.

Question. Same to same. Did you not hear it said or determined that the fines of those who should not attend on the 30th September should be appropriated to pay for a dinner, and was Captain Loring present?

Answer. I did not.

Question. Same to same. Have you collected fines from those who did not attend on the 30th September last?

Answer. I have collected fines from forty-one.

Question. Same to same. When did you begin to collect them?

Answer. In about eight days after the parade.

Question. Same to same. Was the fine from each and every individual alike, and the same the law exacts?

Answer. It was.

Question, by Defendant to same. Have you accounted with me for those fines, or have you paid them to any one by my order?

Answer. I have not. They are still in my possession.

Question, by same to same. Has not the dinner for the Anniversary of the company been paid for, by an assessment for that purpose?

Answer. An assessment has been laid for that purpose; I presume it has been paid for; it is the Treasurer's business to settle those bills.

Question, by the Court. When was that assessment made?

Answer. On the 9th of October an assessment was laid for two dollars each.

Question, by Judge Advocate. What was the amount per head for said dinner?

Answer. I do not know.

Question, by same to same. By what calculation of expenses did you make out the bill or assessment on each member ?

Answer. We had no bill ; two dollars was deemed sufficient.

Question, by Defendant to same. Did the Company vote to dispose of thirty tickets to the members for their friends ?

Answer. Yes, Sir.

Question, by Judge Advocate to same. Did they dispose of that number ?

Answer. I do not know.

Andrew Green was then sworn, interrogated, and answered as follows :

Question, by Judge Advocate. In what capacity do you serve in the Militia ?

Answer. As Sergeant to Captain Loring's Company.

Question. Same to same. Did you at any meeting of the Company when Captain Loring was present hear him make any observation intimating a wish that his Company might absent themselves on 30th September last ?

Answer. No, Sir, never.

Question. Same to same. Did you ever hear any one or more of Captain Loring's Company say any thing respecting their wish or intention not to come out on the 30th September last in the presence and hearing of Captain Loring ?

Answer. No, Sir.

Question. Same to same. Did not the Company or a part of it vote not to come out ?

Answer. Not to my knowledge.

Luther Lapham was then sworn, interrogated, and answered as follows :

Question, by Judge Advocate. Did you at any meeting of the Company, or other time, when Captain Loring was present, hear him make any observation intimating a wish that the privates of his company might absent themselves on the 30th of September, 1805, the day of parade ?

Answer. I did not.

Question. Same to same. Did you ever hear any one or more of Capt Loring's company say any thing respecting their wish or intention not to come out on 30th September last in the presence and hearing of Capt. Loring ?

Answer. I did not.

Question. Same to same. Was you at the meeting at the South Gun House, and did you hear any of the company say they should not come out, but would pay their fines ?

Answer. I did not Sir, but was there.

Question. Same to same. Had Captain Loring's Company any meetings respecting turning out on the 30th September last?

Answer. Not to my knowledge.

Question. Same to same. Have you ever heard Captain Loring say any thing respecting his company not turning out on 30th September last?

Answer. No.

Question. Same to same. Did you ever hear Captain Loring say any thing previous to the 30th of September respecting his intention of protesting against the order of the 9th of September?

Answer. I don't recollect that I did.

Question. Same to same. Did you ever hear Captain Loring reprimand his Company for their not attending their duty on the 30th Sept. last agreeably to orders?

Answer. I never heard him reprimand the Company.

Question. Same to same. Has not Captain Loring, since the 30th of September last, dined with his company at Charlestown?

Answer. He has.

Question, by Defendant to same. Have I commanded the company since 30th of Sept. last?

Answer. No, Sir.

Question. Same to same. Did I not dine with the company as a private citizen?

Answer. Yes, Sir.

Question, by Judge Advocate. Was it by invitation Capt. Loring dined with the company?

Answer. I have no doubt of it.

Question, by Defendant to same. Did I not come late to the place where the company dined? and did not the company leave it before I did?

Answer. Yes, Sir.

Question. Did Captain Loring come in uniform?

Answer. No, Sir.

Isaac Rhoades again interrogated.

Question, by Judge Advocate. Has not Capt. Loring issued an order for parade of his company since the 30th of Sept. last?

Answer. Yes, Sir.

Question. Same to same. Did he in that order, reprimand his men for prior misconduct or neglect of duty?

Answer. Not in the order, but previous to giving the order at Mrs. Marcan's Hall, at a company meeting for business. I think the 8th of October in the evening.

Question. Same to same. How did Captain Loring reprimand them?

Answer. He stated to them the situation he was placed in, in consequence of their not coming out; that he had done his duty, and if they had neglected to do theirs, they must take the consequences. He had ordered the Clerk to collect the fines, and if not paid, he should put them in execution.

Question. Same to same. What was the date of the order, which Capt. Loring issued since 30th Sept. last?

Answer. He ordered the Clerk to fill up notifications the same evening he gave orders for the turning out for the anniversary, which was the 7th, 8th, or 9th of October last.

At fifteen minutes past 3 o'clock, P. M. the Court adjourned, to meet at this place on the morrow, at 10 o'clock, A. M.

Representatives Chamber, Boston, Nov. 21, 1805.

The Court met agreeably to adjournment, and on being called, all answered in their places. Captain Joseph Loring, jun. on being called, answered in his proper person. The Court was opened in due form by the Marshal.

Samuel S. Green was then sworn, interrogated, and answered as follows :

Question, by Judge Advocate. In what capacity do you serve in the Militia?

Answer. As a private and Treasurer in Capt Loring's Company.

Question. Same to same. Did you at any meeting of Capt. Loring's Company, or at any other time, hear Capt. Loring make any observation, intimating or expressing a wish that the privates of his Company should absent themselves from parade on the 30th of Sept. last?

Answer. I did not.

Question. Same to same. Do you know whether Capt. Loring was informed by any person, that his men did not intend to come out on the 30th of Sept. last?

Answer. I do not.

Question. Same to same. Did you ever hear any of Capt. Loring's Company say any thing respecting their wish, intention or determination not to come out on the 30th of September last?

Capt. Loring objected to the question being asked in the words and figures following :

Capt. Loring objects against calling any of his men to prove against him a mutiny, in which themselves are considered as

involved, because this man must be considered as a partaker in his guilt, and no man ought to be called on to accuse, or in any manner implicate himself in any criminal offence ; in this objection he conceives himself to be supported by the 12th article of the Bill of Rights in our State Constitution.

The Judge Advocate in reply observed, that it was very true no witness could be introduced to give testimony against himself, whereby he would be criminated and subjected to punishment ; but that the privates of Captain Loring's Company were called not to give evidence against themselves individually, but against Captain Loring, and that there was to his (the Judge Advocate's) knowledge, no Militia Law of this Commonwealth by which *privates* were liable to punishment, even on a voluntary confession, for mutiny, unless when in actual service ; the law only subjected them to a fine for absence, which has already been incurred by their non-appearance on parade, and which was a subject for the Clerk of the Company to prove elsewhere. A Court Martial had no cognizance over the privates, nor could they be tried by any Court Martial whatever, under the existing laws of the Commonwealth.

The President ordered the Court to be cleared of spectators, which was done ; and the Court then decided, that the privates in Captain Loring's Company should be admitted to prove any mutiny in the Company, but that no individual was bound to accuse himself.

The doors were then opened, and Captain Loring entered.

The same question by Judge Advocate to same witness, to wit : Did you ever hear any of Captain Loring's Company say any thing respecting their wish, intention, or determination not to come out on the 30th September last ?

Answer. I have heard some of them mention that they could not come out on account of their business.

Question, by Judge Advocate. Did you ever hear any of them say they would not come out because the Company had not their proper rank ?

Answer. I do not recollect any such thing.

Question, by Judge Advocate. Do you know whether it was determined that the fines which should be incurred by the absence of any of the Company should be appropriated towards an entertainment ?

Answer. I do not.

Question, by Judge Advocate to same. Did you ever hear Captain Loring say any thing respecting his Company's not coming out on the 30th September last ?

Answer. I do not recollect of ever hearing Captain Loring say any thing.

Question, by Judge Advocate to same. Do you know whether Capt. Loring was informed by any person, that his men did not mean to come out on the 30th September last?

Answer. I do not.

Question, by Judge Advocate to same. Did you ever hear Captain Loring reprimand his Company for not doing duty on the 30th September last?

Answer. I recollect hearing him say he was placed in an awkward situation by his Company not appearing; that he had done his duty, and that they must abide by the consequences of their not having done theirs.

Question, by Judge Advocate. Where did Captain Loring say this?

Answer. I think at Mrs. Marean's.

Question. Judge Advocate. When?

Answer. I can't tell exactly the time, it was after the 30th September.

Question, by Judge Advocate. Did Captain Loring's Company, or any of the members, sign any paper agreeing not to come out on the 30th September, or in any wise determine not to do so?

Answer. I believe some of them, or a part of them, agreed not to come out, but I don't recollect the particulars, how they agreed to it.

Question, by Judge Advocate. Do you know whether Captain Loring in any manner had any information of that agreement?

Answer. I do not.

Question, by Judge Advocate. Did you receive any orders, or request, not to appear on parade on the 30th September?

Answer. I did not.

Question, by Judge Advocate. Who engaged the music for the 30th September?

Answer. I did.

Question, by Judge Advocate. Why were not two Drummers and two Fifers engaged as usual?

Answer. Because I could not get them.

Question, by Judge Advocate. Had the Company any meetings respecting turning out on the 30th September last, either before or since that day?

Answer. I think some of them had, before.

Question, by Judge Advocate. Where did they meet?

Answer. I believe at the Green Dragon.

Question, by Judge Advocate. What did they then determine to do?

Answer. Some of them proposed not coming out, and some of them proposed drinking punch.

Question, by Judge Advocate. Was Captain Loring present at that meeting?

Answer. He was not.

Question, by the same. Was he informed of the proposals you mentioned, which then took place?

Answer. Not that I know of.

Question, by the same. What number was present?

Answer. I cannot tell.

Question, by the same. Was it a general meeting of the Company?

Answer. It was not by any order, but a social meeting of some members.

Question, by Defendant. Did you dispose of thirty Tickets to the members of the Company for their friends, and did you receive the cash for them, for the use of the Company, in addition to the proceeds of the assessments made on the members of the Company?

Answer. I did not. I disposed of eighteen Tickets, and received the pay for them.

Question, by Defendant. Was there not an additional assessment of two dollars laid by the recommendation of Lieut. Davis, to make up the deficiency of the first assessment of two dollars to defray the expenses of the anniversary dinner on the 17th October?

Answer. It was mentioned that there was money enough to pay for dinner and liquor, but not for music, and it was necessary there should be another assessment of two dollars to pay for music and old debts.

Question, by Defendant. When you told me you could not procure the customary music, did I not observe to you, the law required only one drum and fife, and if we could not get more it would answer?

Answer. You did.

Question, by Defendant. Was not the music in this town and in the neighbouring towns in very great demand on the 30th September, so that it was very difficult for the various Companies in the Brigade to have a drum and fife apiece?

Answer. I believe it was; I believe it was difficult, and could procure no more.

Question, by Judge Advocate. Have you any papers in your possession or keeping of the doings of the Company on the evening you mentioned they met at the Green Dragon?

Answer. I have not.

Question, by Judge Advocate. Had you not some time ago?

Answer. I never had.

Question, by Judge Advocate. How are the fines of your Company appropriated?

Answer. All that I have received go to pay the debts of the Company, as far as they will go.

Question, by Judge Advocate to same. Were the fines of the Company appropriated to the defrayment of expenses for dinner, or other entertainments?

Answer. They were not.

Question, by Defendant. Were not the fines generally used for candles and paying for men who opened the hall for the exercise of the Company?

Answer. I can't answer for that; I don't know; they were generally appropriated for that; whether they were enough or not I can't answer.

Question, by Judge Advocate to General Winslow. Did Captain Loring, or any one by his order, make known to you the situation of his Company, on the morning of the 30th September, previous to his coming on parade with four Sergeants, the Lieutenant and two Musicians?

Answer. He did not, Sir.

Question, by Judge Advocate to Captain John Brazer. Did Captain Loring, or any one by his order, make known to you the situation of his Company on the morning of the 30th September last, previous to his coming on parade with four Sergeants, the Lieutenant and two Musicians?

Answer. He did not, previous to his coming on.

Question, to General Winslow by Defendant. Was I not under the immediate command of Captain John Brazer, Senior Officer of the Sub Legion Light Infantry on the morning of the 30th September, 1805?

Answer. I take it he was till I came on to the field; while Colonel Badger was on the field, I take it all the troops were under his command till I arrived there.

Question, to Captain Brazer by Defendant. Was I not ordered by you to parade before the New State House on the 30th September, at 9 o'clock in the morning, and is this the order? (which was read to the Court in the words and figures following.)

BRIGADE ORDERS.

For 30th September, 1805.

SIR,

Colonel Badger will order one Gun from the Artillery at 10 o'clock, at which time the line will be formed immediately; the several Officers will take care to preserve a proper distance between their commands. On signal of two Guns from the Artillery the whole Brigade will wheel to the right by Compa-

nies for Inspection, and have their Rolls ready for delivery. Colonel Badger has leave to dispense with the Chelsea Company's appearance on that day. After the Review has taken place, the Troops will be dismissed ; no man, neither Officer nor Soldier, will be allowed to be at a greater distance from the Common, than within hearing the long roll. At a signal of one Gun from the Artillery, every man, both Officers and Soldiers, will take their places in the line. Captain Davis' Company of Light Infantry, one Company of Artillery with their Pieces, the third Sub Legion of Infantry under Major Stodder, with Captain Dean's Company of Infantry, from the second Sub Legion, will march under the command of Lieut. Col. Badger for the heights of South Boston ; the remainder of the Troops will tarry on the ground, and proceed as ordered, as it is intended to represent an engagement. The Officers commanding Platoons will be very attentive to their men, and not allow them to hurry in any of their movements, and be very particular in obeying the orders they may receive from their Superior Officers, as every thing depends on attention. The Brigadier flatters himself that such perfect attention and good order will be observed, both by Officers and Men, that they will receive his most hearty thanks, as well as the applause of those who may be spectators, among whom there will be probably many Judges of Military Discipline.

Per Order Brig. General,

(Signed) CHARLES CLEMENT, B. M.

Capt. JOHN BRAZER, *Sen. Officer* }
Sub Legion Light Infantry. }

SUB LEGIONARY ORDERS.

For 30th September, 1805.

Capt. Loring will observe the preceding Brigade Orders ; and it is further ordered, that each Commanding Officer in the Sub Legion have his Company on the Common in front of the State House at 9 o'clock, on the 30th inst. as the Sub Legion of Light Infantry will be formed at that time. Ensign Munroe is appointed Adjutant for that day, and will be obeyed accordingly.

JOHN BRAZER,

Sen. Officer Sub. Legion Light Infantry.

Answer. You was. It is the order.

Question, to General Winslow by Defendant. Was not Capt. Brazer the Officer *immediately* over me, to whom, and through whom all communications from me ought to be made ?

Answer. No doubt of it.

Question, to Captain Brazer by Defendant. Did I not make known to you, as my Commanding Officer, the situation of my Company on the 30th September, immediately on my coming into the parade?

Answer. You did.

Question, by President of the Court to Capt. John Brazer. Did Capt. Loring form with the Sub Legion?

Answer. He did not. The Sub Legion was not formed before the line was formed.

Question, by Defendant to Capt. Brazer. Did I not go into the place you ordered me?

Answer. You did.

Court adjourned to ten o'clock to-morrow.

Representatives Chamber, Friday, Nov. 22, 1805.

The Court met agreeably to adjournment, and the Members on being called all answered in their places. Capt. Loring, on being called, appeared in his proper person. The Court was opened in due form by the Marshal.

William Howe sworn and interrogated.

Question, by Judge Advocate. Had you any conversation with Samuel S. Green previous to the parade of 30th September last, respecting the intention of Capt. Joseph Loring's Company not to come out on that day?

Capt. Loring objected to the question being asked in the words following: The Government must not impeach their own Witnesses. If any person has a right to impeach the Witness of Government, it is myself.

The Court was cleared, and the Court decided, that testimony to impeach the credibility of Witnesses may be introduced, and that Capt. Loring's objection be overruled.

The Court was re-opened, and Capt. Loring appeared. The last foregoing question was therefore asked, and the Witness answers:—I can't say it was previous to the 30th of September, but I had some conversation with Samuel S. Green at his shop. I said to him, You had a row at the Green Dragon, had you not? He said some of them met, and agreed not to come out, unless they had their rank; and said if Capt. Loring would *resign, or was broke*, they would choose old Eben Pratt, of Chelsea, and he was the oldest Captain in the line, and according to the idea, that Capt. Davis had taken

rank of Capt. Loring, he would take the right on Boston Common. I mentioned to him, that if Capt. Loring knew of their meeting at Green Dragon Tavern, whether it would not break him ; he said that Capt. Loring did not know of it two or three times, and clapp'd his hand to his pocket, and said, I could shew by a minute I have in my pocket, that Capt. Loring did not know of it. We after that had some conversation, and he took the Militia Law from the shelf, and shewed me a Section respecting taking rank from date of Commissions, and said it was singular that Capt. Davis' Commission and Capt. Messenger's should be dated on the same day, and Capt. Loring's a year or two years before, and yet Davis take rank of him. I told him Messenger was an older Captain than Davis, and did not believe it.

He said the Company meant to come out on their Anniversary. He said he could shew me that they would not come out (unless they had their rank) in a Brigade Muster on 30th September last. I asked whether they would come out on their Anniversary. He said they would ; and if they could not come out with their Captain, they would with their Lieutenant ; and if they could not come out with him, they would with a Corporal. I said, I shall win my ticket, and then went off.

Question, by Defendant. Are you not a Member of Winslow Blues, commanded by Capt. Daniel Messenger ?

Answer. Yes, Sir.

Question, by Defendant. When did Green say the meeting was at the Green Dragon ?

Answer. He did not tell when it was ; this conversation was not many days after the meeting at Green Dragon, to explain that I heard of it in carrying a Notification to Dr. Wakefield.

Question, by same to same. When was that Notification dated ?

Answer. I don't know.

Capt. Abraham Butterfield sworn and interrogated.

Had you any conversation with Capt. Joseph Loring, jun. prior to the 30th September last, respecting the parade which was ordered for that day ?

Answer. I had, Sir. In the course of our conversation, the sudden death of Major Hatch of Boston was mentioned ; some observations on the character of the man, together with the circumstance of his being deprived of his Commission by Court Martial took place ; immediately on which Capt. Loring observed, in a jocose manner, as I then thought, that I might have the opportunity of seeing him tried by a Court

Martial within six months. I made some light reply to it, observing, I hoped he would be broke, or something like that, and asked him what he had done, or meant to do, to subject himself to a trial by Court Martial. He replied, that in consequence of certain arrangements having been made respecting the date of his Commission and of Captain Davis', Capt. Davis would now take rank of him, whereas last year he took rank of Capt. Davis. He proceeded to observe, that if he could not be allowed the rank which he took the last season, he should *march his men off the field*. There was nothing further in particular, that I recollect. This was at Capt. Loring's house, on the 14th of September last, I believe.

Question, by Judge Advocate. When you told Captain Loring you hoped he would be broke, did you say it from any inclination or wish you had that he might be deprived of his Commission, or as a jocosely reply to what you have said you at the time the conversation took place conceived a jocosely observation of his ?

Answer. I made it as a jocosely reply to what I then conceived his jocosely observation. I would further observe, that our conversation was very unguarded ; we were disposed to pass a jovial hour.

Question, by Captain Loring to same. Did I not receive you at my house as an old acquaintance, and did I not treat you with the hospitality of a friend, and was not my conversation with you open, candid, and without restraint ?

Answer. Yes, Sir.

Question. Captain Loring to Butterfield. Did I not observe to you, that no Officer in my opinion was obliged to obey orders if contrary to the Constitution and Militia Law ?

Answer. I recollect his making such an observation.

John I. Rea sworn and interrogated.

Question, by Judge Advocate. Do you know any thing respecting any intention or determination of Captain Joseph Loring, jun.'s Company not to come out on the 30th September last ?

Answer. I do not.

Question, by Judge Advocate. Did you not have a conversation with Mr. Samuel Jenks on that subject ?

Answer. Not to my recollection.

Question, by Judge Advocate to same. Were not you a Member of Captain Loring's Company previous to 30th September last, and on that day ?

Answer. Yes, Sir.

Captain Loring, on the Judge Advocate asking the above question, in writing observed as follows : I wish the Court would

grant me a copy of that part of their records, wherein they have decided that the Government has a right to produce witnesses on its own side, and immediately produce other witnesses to invalidate their own testimony.

The Court said they would defer the consideration of this request.

Ensign Samuel Jenks sworn and interrogated.

Question, by Judge Advocate. Have you had any conversation with John I. Rea, the Witness last produced, respecting the intention or determination of Capt. Loring's Company not to come out on the 30th of last September?

Answer. I have, Sir. It was in consequence of a conversation I had with Ensign James Alexander. I conversed with Rea, at the house of Mr. Richard's Tavern, near the Market, on 17th September last. After mentioning what had transpired between Ensign Alexander and myself, which was this, whether I had heard the news that morning of the determination of the Washington Light Infantry Company, commanded by Captain Loring; I immediately replied I had not; asked him what it was; he said that they agreed one and all not to come out, excepting the Officers and Music. Furthermore, he said the privates were to pay their fines, and that was to be deferred to defray the expenses of the Anniversary Celebration, and that the Officers only were to come out with the Music. I mentioned this the same day in presence of Mr. Rea, Jonathan Willington, William Chandler and several others. Mr. Rea said he did not care, it was none of his doings, but a plan of their Officers. I then asked him whether it was first instigated by their Officers; he told me it was; I called the attention of the Company present, as I expected at a future day an investigation would take place, and feeling it my duty, made a written communication to General Winslow. Mr. Chandler said he had heard that the Company had taken a vote not to come out on the 30th of last September. Mr. Rea said nothing, but nodded his assent to it.

Question, by Defendant. At what time of day was this conversation with Rea?

Answer. About three o'clock in the afternoon.

William Chandler sworn and interrogated.

Question, by Judge Advocate. Was you present at the conversation testified to by Ensign Samuel Jenks?

Answer. I believe I was.

Question, by Judge Advocate. Did you hear the same conversation between him, the company, and John I. Rea?

Answer. I don't know that I heard the whole of it, but Mr. Rea and myself have had other conversation previous to that time on the same subject. Mr. Rea told me in my shop, that Captain Loring's Company, which he belongs to, had met at the Green Dragon Tavern, and agreed not to come out on the 30th September last. At the same time I believe Mr. Jeremiah Sprague was there, belonging to the same Company. I told them I guess'd they would come out; the Captain would not be so unwise as not to fetch his Company out on that day. Rea said he did not suppose the Captain wished them to come out, to be degraded, as they should not have the same rank they had last year.

Question, by Defendant to Mr. Chandler. Did he say the Officers were with the Company at the Green Dragon Tavern, at the meeting referred to?

Answer. He said they were not. I asked whether the Officers knew whether they were met there. He said they did not know whether they did or not.

Question, by Defendant. Did you hear Jenks say he would go any lengths to have me broke?

Answer. No, Sir.

Col. Thomas Badger sworn and interrogated.

Question, by Judge Advocate. Had you any conversation with Captain Loring, or any of his Company, respecting the intention of his Company not to turn out on 30th September last?

Answer. I had no conversation with Capt. Loring. I had with some of his Company. I believe Mr. Lincoln. It was something general of a conversation, and reported about considerably, that Capt. Loring's Company did not mean to come out. I heard of it and talked to Mr. Christopher Lincoln and others of the Company. I told them I had heard such a thing, and hoped they would think better of it.

Christopher Lincoln sworn and interrogated.

Question, by Judge Advocate. Do you know any thing relative to the intention or determination of Captain Joseph Loring, junr.'s Company not to come out on 30th Sept. last?

Answer. I know something relative to it. I heard several of the members say they would not come out. I know more, but won't tell it, unless I am asked particular questions.

The Court was cleared on the Witness Christopher Lincoln's answering as above, and determined that the Court will oblige the Witnesses to give evidence of all matters relative to the charges exhibited against Captain Loring, and connected

therewith ; but as the Court decided yesterday, no Witness is obliged to mention his own name, or criminate himself individually. The Court look upon the conduct of Christopher Lincoln as highly contemptuous to themselves and the Judge Advocate, by his refusing to give evidence, unless by answers to particular questions, and the Court will exercise their powers towards the punishment of any Witness who may hereafter be guilty of similar conduct before them.

The doors of the Court were then opened, and Captain Loring entered, when the foregoing determination was read.

The Witness then proceeded as follows :

I know, that part of Captain Loring's Company did meet at Green Dragon ; I don't recollect the evening ; there was considerable conversation concerning turning out ; the Company there agreed not to come out. I don't recollect any thing being said about the appropriation of fines. I don't know that Captain Loring had intimated to the Company that it would be agreeable they should not come out. Captain Loring was not, to my knowledge, informed of the determination of the Company. I don't wish to have my answer stand so as related to the words " particular questions" above.

Question, by Defendant to Christopher Lincoln. Was I at the meeting of the Green Dragon ?

Answer. You was not.

Question, by Defendant to Christopher Lincoln. Do you know of my conniving at, abetting, or procuring the men under my command, not to turn out, the 30th September, 1805 ?

Answer. I do not.

Question, by Judge Advocate. Was there more than one meeting at the Green Dragon, respecting the 30th Sept. last ?

Answer. I don't know of more than one.

Question, by Judge Advocate. Who warned that meeting ?

Answer. All the members ; one warned another ; I mean all that were there ; all the Company did not come,

Jeremiah Sprague sworn and interrogated.

Question, by Judge Advocate. Were you present at the meeting of members of Captain Loring's Company at Green Dragon Tavern respecting turning out on 30th September ?

Answer. I don't recollect any thing that took place there ; I can't recollect any thing that was said ; I didn't expect to be called in the case.

Question, by Defendant to Mr. Jeremiah Sprague. Did you drink the punch, or did you agree not to come out ?

The Judge Advocate objected to asking the Witness this question upon the very grounds which Captain Loring had yesterday urged, that it related solely to the Witness, and he could not be obliged to criminate himself, and also upon the decision of the Court. The Court determined that the question could not properly be put to the Witness.

Ezra Hawks sworn and interrogated.

Question, by Judge Advocate. Do you know any thing respecting Captain Loring's Company, or a part of them having met to determine on not coming out on 30th September last ?

Answer. Some of them met at Green Dragon Hall, I can't recollect the time, it was before the 30th September last ; I heard many of them saying they had determined not to come out on 30th September. I don't recollect any thing being said of any part of the Company intending to come out. Captain Loring was not, as I know of, informed of their determination.

Court adjourned to 1st Tuesday, 3d day of Dec. 11 o'clock.

Representatives Chamber, Tuesday, Dec. 3d, 1805.

The Court met agreeably to adjournment, and on being called, all answered in their places. Capt. Loring appeared in his proper person. The Court was then opened and the proceedings of the last day's sitting read by the Judge Advocate.

Question, by Defendant to Ensign Jenks. Did Brigade Maj. Clement and Capt. Messenger advise you to make inquiries respecting the mutiny in my Company, and to give information thereof to General Winslow ?

Answer. They did not, it was from a conscious discharge of my duty.

At Captain Loring's request, the following letter is recorded, from Ensign Samuel Jenks to Gen. Winslow.

Boston, September 20th, 1805.

RESPECTED SIR,

Ever ready to discountenance disloyalty and insubordination, more especially in military matters, and being informed of the mutinous spirit prevalent in the Washington Light Infantry Company, (so called) commanded by Captain Loring, I think it my duty to commit it to writing, and give the earliest notice of the same to my Superiors, not doubting but that an investigation, at some future day, will take place, and that I may be called to evidence the same, if circumstances should make it necessary and my information be correct.

In the first place, that on or about the 17th instant, being then in the cabinet maker's shop of Ensign James Alexander, he asked me, if I had heard the news about the determination of the Washington Light Infantry Company. I told him I had not, and inquired what it was. He said "they had agreed, one and all, not to come out on the 30th instant, excepting the Officers and Music, and that the privates were to pay their fines and reserve them to defray their anniversary expenses, as they did not like the new arrangement of rank, given to their Captain." In the afternoon following, happening to fall in company with several persons, I related the above, and was making some observations thereon, till interrupted by a reply from Benjamin Hallowell of the Fusiliers, when some words then ensued, in presence of Mr. Jonathan Willington, Mr. William Chandler, Mr. John Rea and others ; I answered that if such conduct should be transacted by the Company, it would in my opinion have a tendency to dissolve the Company, and break the Officers ; which drew the following further information and confirmation of the above from Mr. John Rea, (a member of the Company aforesaid) that he, the said Rea, said he did not care, it was none of his doings, but it was a plan of their Officers. I asked him if it was first instigated by their Officers. He said it was.

Mr. Chandler then said, he had heard that the Company had taken a vote so to do ; which was assented to by Mr. Rea.

I then called the attention of the Gentlemen present, to bear in mind what had passed, as I expected if Captain Loring and his Company should put in practice what they had threatened, that the present conversation would not be the last we should hear of it, to which they consented. Accordingly last evening, after the meeting of the Mechanic Association had dissolved, I communicated the above to Maj. Clement, Capt. Messenger and Capt. Phillips, at the same time informing them, it was my intention to commit it to writing and communicate it to your Honor, as I thought it my duty ; they agreeing with me in opinion, and wishing I would. I hope your Honor will have the goodness to excuse my troubling you with so circumstantial and lengthy a detail, which I cannot but hope, for the honour of the gentlemen concerned, may never be wanted, and that it may appear that the Company mentioned are not in that state of Insurrection and Mutiny, which the present report would lead us to believe, but that they would reconsider their rashness, and turn out, and do themselves as much honour by due subordination to their Superiors, as they have acquired by their former soldierly discipline and appearance.

I have the honour to be, Sir, with esteem, your Honor's most obedient and very humble Servant,

SAMUEL JENES.

*Hon. John Winslow, Esq. Brigadier Gen. of the first }
Division of the Commonwealth of Massachusetts. }*

Captain Daniel Scott sworn and interrogated, and answered as follows :

Question, by Judge Advocate. Had you any conversation with Capt. Loring prior to the parade of 30th September last, respecting that parade, or any thing appertaining to or connected with it ?

Answer. Yes. But I wish for time to recollect the conversation ; I could not under a week or ten days, to give the whole.

Question. Same to same. Did you hear Capt. Loring say any thing respecting the intention of his Company not to come out on the 30th September last ?

Answer. Not before the parade, but since he has repeatedly told me that he never knew any determination of theirs not to come out, but that he heard they were not coming out on Saturday evening, or the day before the Parade, by one of his Wife's Brothers or Sisters, as I understood it, having mentioned it at his house. Captain Loring begged leave to correct the Witness, by saying it was his Wife's Brother ; the Witness therefore adds, " brother or sister " to his answer.

Question, by Defendant to same. Are you not my confidential friend, and is it not known that I am in the habit of conversing with you in the most free, unreserved and confidential manner ?

Answer. Captain Loring can best answer the first part of the question ; to the latter part, I say, Yes, I presume so.

Question, by Defendant to same. Did you ever in all my intercourse with you, hear me utter any insubordinate or mutinous sentiments towards General Winslow, or any body in authority over me ?

Answer. No, Sir.

Lewis Glover sworn, interrogated and answered as follows :

Question, by Judge Advocate. Had you any conversation with Captain Loring prior to the parade of 30th September last, respecting that parade, or any thing appertaining to, or connected with it ?

Answer. I don't recollect any particular conversation before, but I have since.

Question, by same to same. What conversation have you had since, with Capt. Loring ?

Answer. I asked if he was knowing to his men not coming out ; he observed he was at Portsmouth at the time their meeting took place, and was unwell there.

Question, by Defendant to same. Did you see me within ten days of 30th Sept. 1805, the day of parade ?

Answer. I don't recollect.

Question, by Judge Advocate to same. Have you not had a conversation with James Elliot on this subject relative to Capt. Loring ?

Answer. I believe I have since the parade, nothing more than my opinion.

Question, by Defendant. Who is James Elliot ?

Answer. A man, born of a woman, I presume.

The Judge Advocate then informed the Court that there were many more Witnesses on behalf of the Government, but being all to the same points already inquired of, he should not introduce them, but, if during the trial any new testimony should be presented, he should offer it to the Court.

The Judge Advocate then called upon Capt. Loring to introduce any testimony he might have in his defence.

Josiah Bacon was introduced and interrogated, and answered as follows :

Question, by Defendant. Did I not give you orders, as Clerk of my Company, to warn my Company to appear on parade for Review and Inspection on the 30th Sept. 1805 ?

Answer. Yes, Sir.

Question. Same to same. Did you, or did you not obey those orders ?

Answer. I did.

Question. Same to same. What was the form of the Notification, by which my Company was warned ?

Answer. This is ; which was handed to the Judge Advocate, and read in the words and figures following :

COMPANY ORDERS.

Boston, September 23, 1805.

Mr.

SIR—You, being a Member of the Company, commanded by Capt. Joseph Loring, junior, are hereby ordered to meet on Monday, the 30th inst. agreeable to Brigade Orders of the 9th and 16th inst. at the *Green Dragon* Hall, at

8 o'clock, A. M. with uniform, arms and accoutrements complete, including Knapsacks, Canteens, and 16 sporting Cartridges.

The Roll will be called at 9 o'clock, A. M. precisely.

By Order of the commanding Officer,

Clerk.

Question. Same to same. What was the form of my orders to you predicated on the 9th September?

Answer. This is; which was read in the words and figures following:

COMPANY ORDERS.

Boston, September 18, 1805.

Agreeably to Brigade Orders and Sub Legionary Orders of September 9th, 1805, you will order the Officers and Members of the Company, which I command, to parade for Review and Inspection, on Monday, the 30th September, 1805, at 8 o'clock. *Roll* to be called at nine o'clock, at Green Dragon Hall. It is expected both Officers and Soldiers will be equipped according to law.

Yours, JOSEPH LORING, jun.

Captain Sub Legionary Brigade.

*Mr. Josiah Bacon, jun. Clerk of }
Washington Infantry, so called. }*

N.B. Knapsacks and Canteens must be brought, with Cartridges and Balls complete.

Also, request a meeting on Friday eve, at the Gun House, say 27th Sept. 1805, at 7 o'clock, with arms.

Received on the 18th inst.

Question. Same to same. Did you not send me your Notification to correct, and did I not as usual alter it from Ball Cartridges to 16 Sporting Cartridges?

Answer. You did, and I received it corrected.

Question. Same to same. Did you know me directly or indirectly say any thing to connive at, abet and procure you or the men under my command to mutiny against the Brigade Orders of the 9th and 16th September, for the Review and Inspection of 30th September, so as to neglect and refuse to appear on said parade, to discharge your and their duty as Soldiers on said day, agreeable to the spirit and intent of said orders?

Answer. I did not.

Question. Same to same. Did I not, in preparing for this parade, show at the meeting of the 28th September, as much anxiety as usual about the parade, and did I not appear much dissatisfied to find so few men as 24 with arms that evening?

Answer. You did.

Question. Same to same. Did Brigadier General Winslow, or Brigade Maj. Clement inspect me or my Officers on the 30th September, 1805, agreeably to order of 9th and 16th September, or the Inspection Roll which you signed?

Answer. Not to my knowledge.

Question, by Judge Advocate to same. When had you the first information of the determination of the Company not to parade on 30th September last?

Answer. I don't know; I don't know the Company ever made such a determination.

Question. Same to same. When you went on parade at Green Dragon Hall, 30th September last, did you expect the soldiers would be present for duty that day?

Answer. I had no reason to expect they would not be there, meaning, I expected they would be there.

The Court adjourned till to-morrow.

Representatives Chamber, Wednesday, Dec. 4, 1805.

The Court met agreeably to adjournment, and on being called, all answered in their places. Captain Loring on being called, appeared in his proper person. The Court was opened and the proceedings of yesterday read.

Mr. Lewis Glover, a Witness interrogated yesterday, came into Court and stated, that he misconceived the question of "who is James Elliot?" [asked by the Def.] and now additionally answers thereto, that he is a Gentleman of his acquaintance, who belongs to the Corps he does.

Question, by Captain Loring to General Winslow. What are the statements or facts in that paper which are untrue, and unofficer-like for me to state?

The Judge Advocate observed to the Court, that in his opinion, that was a question which ought not to be asked a Witness, because the Complaint contained the charges which Capt. Loring alluded to, and the Court were to decide what the statements of facts were by the regular course of the testimony and the paper itself.

The Court determined that the Defendant might ask the question.

Answer. The papers are before the Court, and they will be the judges.

Josiah Bacon again interrogated and answered as follows :

Question, by Defendant. Did I not inform you, by a communication delivered by Mr. Thompson, after giving you the Warrant for warning the men of my Company conformable to the Brigade Order of the 9th September, that the Cartridges with Balls were dispensed with ?

Answer. You did.

Question, by same to same. Did you see me in Boston between the 18th and 28th of last September ?

Answer. I did not.

Ezra Davis sworn, interrogated and answered as follows :

Question, by Defendant. In what capacity do you serve in the Militia ?

Answer. As Lieutenant in the Washington Infantry, commanded by Captain Joseph Loring.

Question, by Defendant. What took place on Saturday evening, the 28th September, at the South End Gun House ?

Answer. On that evening I arrived at the South End Gun House at the time set by the Notification for the Company to meet ; had the Company formed, and was going through the manual exercise, when Capt. Loring came in. After the men had gone through the manual exercise, I delivered the Company up to him. He then went through the exercise, after which he let the Company rest, during which time I inquired respecting his health, &c. : he then informed me I must act as platoon Officer, as he should go through the manœuvres, which he would probably have to go through on the 30th. After exercising the men about an hour, the Gun House was cleared of spectators, telling them the exercise of the evening was over. He then requested the men to be very punctual in appearance on parade, on Monday, 30th September, as he should be obliged to be on the Common by half past nine, by an order which he had received from Capt. Brazier ; and requested me to be at the Green Dragon before nine, if possible, or by nine, in order to have the Company formed by nine o'clock, as he lived at Chelsea. I don't recollect any other particulars respecting Company business.

Question, by Judge Advocate to same. Had you not heard, prior to the 28th September last, that your men were generally not coming out on the 30th ?

Answer. I never heard it, either directly or indirectly, from any member of the Company ; some of General Winslow's friends, the week previous to the 30th September, asked me if the Washington Infantry were coming out. I answer-

ed them I presumed so, as I had heard nothing to the contrary from any of the members. I heard it mentioned in common conversation with some of General Winslow's friends.

Question. Same to same. When you went on parade at Green Dragon Hall, on the 30th September last, did you expect the soldiers would be present for duty that day?

Answer. I had no reason to doubt. It was their duty to obey their orders, as I did mine.

William Munroe sworn, interrogated, and answered as follows :

Question. In what capacity do you serve in the Militia?

Answer. I have an Infantry Commission, and act as Ensign to the Washington Light Infantry (so called).

Question, by Defendant. Did I not treat you as Adjutant on the 30th September, in all my communications with you as a Gentleman and Soldier?

Answer. Yes, Sir.

Question. Same to same. Was you not at the meeting of my Company as Ensign thereof on Saturday evening the 28th September, 1805?

Answer. I was. When I went into the Hall they were marching in Platoons, and Captain Loring told them that was the way they would march in the salute; he told them he expected they would be equipped, and be on the field.

The Judge Advocate observed, that for his own reputation, and lest, by the face of the Record, it should appear that he had sanctioned the whole testimony of Lieutenant Ezra Davis and Ensign Munroe, he would here state, that he had informed the Court, previous to their introduction, that Captain Loring could not legally introduce Witnesses to prove any thing which he himself had said in his own favour; that the confession of a man against himself, voluntarily made, was the highest evidence against him; and if in the course of examination of a Witness to prove a confession of guilt, a conversation should be mentioned by the Witness between a Defendant and himself, there the Court ought to receive the whole, or no part of it, that by a proper connexion it might be justly interpreted and construed; but this is not the case where a Defendant himself brings forward Witnesses to relate his own conversations in his own favour, and no Court ought to admit such testimony.

Question. Same to same. Do you know of my conniving at, abetting or procuring my men to mutiny against the or-

ders of the 9th and 16th September, for review and inspection the 30th September?

Answer. I do not.

Question, by Judge Advocate. Did you expect to see, on 30th September last, Captain Loring's Company on the Common, as a Company?

Answer. I did expect to see them, as I knew they had their orders. I was informed they were not coming out, but their orders confirmed me in my opinion that they would.

Question. Same to same. How long prior to the 30th did you hear the Company did not mean to come out?

Answer. Some time in the latter part of the week before, it might be as early as Thursday.

Question. Same to same. Did you inform Capt. Loring of their intention?

Answer. Yes Sir. the Saturday evening, going home, I told him I had been told so, and he observed he did not believe any thing of it.

Sylvester Thompson sworn, interrogated, and answered as follows:

Question, by Defendant. Do you know that I left Chelsea, the place of my residence, to go to Portsmouth, on Saturday, 21st September last?

Answer. I do, Sir.

Question. Same to same. How long was I gone, and on what day of the week and month did I return?

Answer. You returned on Friday the 27th in the afternoon.

Question. Same to same. Did you not remain, till 11 o'clock on Saturday evening, in Charlestown, waiting for me; and did I not go with you to Chelsea, and remain there till Monday morning, the day of Parade?

Answer. Yes, Sir.

Andrew Dunlap sworn, interrogated and answered as follows;

Question, by Defendant. Did you see me at Portsmouth on Wednesday the 25th September last, at Mr. William Neil's house? and what was my situation?

Answer. I went down to Mr. Neil's house on the evening of that day, and was informed that Mr. Loring was in the Compting-Room. I went to the Compting-Room, and found Mr. Loring sitting on a chair, apparently very much exhausted. I found from inquiries that Mr. Loring had been taken with a cramp in the stomach, and in about ten minutes after, he was taken with another. He appeared to be in great pain, and it took two or three persons to hold him down. In the course of two hours he had frequent returns of the spasms.

Dr. Pierpont was sent for, and recommended to Captain Loring not to move for a day or two.

William Jennings sworn, interrogated, and answered as follows :

Question, by Defendant. Are you a member of the South End Artillery, and do you not take charge of South End Gun House ?

Answer. I do, Sir.

Question. Same to same. Was you not at the Gun House, Saturday evening, the 28th September, when my Company met for exercise ?

Answer. I was, Sir. I opened the house, and the men met there as usual. Lieutenant Davis took the command, and went through the exercise. Then Captain Loring came. He gave up the command to Captain Loring, and he went through the exercise again ; he told them 'twas very necessary to pay all the attention they could, for they should have a great deal of duty to do on Monday ; then he dismissed them*for a few minutes ; then the men were talking, as they commonly are ; *some of them were talking of not coming out ; not in hearing of the Officers*. I asked them why they were not coming out, and told them it was a pity ; they said they understood the Officers and Company were going to be degraded, and it would be a hard day's duty, and would rather pay their fines, as they were busy. *Captain Loring then heard them talking*, and ordered them to fall in, told them that they know'd their orders for Monday ; some of them wished to have them read again, and it was ; he told them then if there was any doubt in their minds about rank, it was not for them to decide it, and he expected to see every man in uniform for the duty of the day ; if there was any dispute, they were to come on the field as Soldiers, and have it decided there, or afterwards ; he told them he expected to see them all there ; if there was not five men, he would march on to the field at the time set.

Question, by Judge Advocate to same. What number of men were present at the Gun House, 28th September ?

Answer. About thirty.

Question, by Judge Advocate. Was Lieutenant Davis present all the time you were there ?

Answer. I won't pretend to say ; I believe he went out a few minutes, I an't certain.

Question. Same to same. Was Ensign Munroe present all the time ?

Answer. He came about 8 o'clock ; he was not there in the first of the evening.

Brigade Major Charles Clement again interrogated.

Question, by Defendant. Did you inspect my Company on 30th September last?

Answer. I did not.

The Judge Advocate then read the 30th and 36th Sections of the Militia Law of this Commonwealth, passed June 22d, 1793, as relative to the present case. Capt. Loring then handed the Judge Advocate a paper containing the words and figures following :

The Judge Advocate having been good enough to point out to me the Statute on which the Complaint against me is founded, I think proper to apprise the Court and Judge Advocate, that I shall have occasion to refer in the course of my defence to the 8th Section of the United States Law, passed 8th May, 1792, which says, "all Commissioned Officers shall take rank according to the date of their Commissions." Upon the 29th Section of Massachusetts Militia Law, passed 22d June, 1793, which also says, "that all Officers when on duty shall take rank according to the date of their Commissions."

Upon the 31st Section of the same Law, which says, that at any muster, the several Companies shall form in Regiment, according to the Rank of the Officers ; which was read to the Court.

The Court was then ordered to be adjourned to 11 o'clock to-morrow, A.M. before which, Captain Loring having observed he had no more Witnesses to introduce, he was directed to be ready with his Defence.

The Court was adjourned accordingly.

Representatives Chamber, Thursday, Dec. 5, 1805.

The Court met agreeably to adjournment, and on being called all answered in their places. The Court was then opened by the Marshal. Captain Loring appeared in his proper person and answered.

The whole proceedings of the Court to this day, from the commencement, respecting Captain Loring, were read. Capt. Loring then, by leave of the Court, read his Defence, which is as follows :

Mr. President, and Gentlemen of this Honourable Court,

The time that has been occupied in examining the multitude of Witnesses, who have been produced by Gen. Winslow, in order to support the prosecution, induces me to dispense with the examination of many Witnesses, whom I should have sum-

moned, were it not for my belief that your patience, as well as my own, has already been put to a pretty severe trial.

It is now about two months since I was put under arrest ; during which time I have laboured under the anxieties inseparable from my situation, and have been entirely interrupted in my attentions to any other business.

Upwards of twenty Witnesses have been interrogated to furnish evidence against me ; and after all, what can there be collected from this mass of testimony, that can satisfy your minds beyond a reasonable doubt, that I am guilty of any particle of the charges exhibited against me ?

I am charged by Gen. Winslow with disobeying his Brigade Order of the 9th September, ordering his Brigade to appear on Boston Common, on the 30th of September for Review and Inspection.

I am also charged with disobeying another of his Brigade Orders, issued on the 16th September, requiring the Soldiers of the Legionary Brigade to appear with sixteen Cartridges for sporting, and dispensing with the twenty-four Cartridges with Balls, with which the Law requires that every Soldier should be constantly provided ; and without which he is not in a condition to pass a legal Inspection.

I am also charged with coming on to the parade without any of my Soldiers.

If I did come on, without any of my Soldiers, it is highly probable I came on without the requisite number of sporting Cartridges : but it by no means follows, nor has it I trust been satisfactorily proved to you, that I have disobeyed either his Order of the 9th, or his Order of the 16th of September.

On the contrary, it appears by the testimony of the Clerk of my Company, a young gentleman of unimpeachable truth and integrity, who has been produced as a Witness in support of the Prosecution, that he did, in conformity to my warrant and command to him, notify and warn the members of my Company to appear in Arms and Uniform complete at the Green Dragon, at 9 o'clock in the morning of the 30th September, with sixteen sporting Cartridges. Notifications to this effect, were given to every individual of my Company, as seasonably as the Law requires. My notifications were at first predicated solely on the Brigade Order of the 9th ; they bore date of the 18th September ; they were printed, and required my men to appear with Cartridges with Balls ; but after they were printed and before they were distributed to my men, I received the Brigade Order of the 16th September, requiring the troops to appear with 16 sporting Cartridges instead of 24 Cartridges with Balls.

I immediately, on the receipt of the Brigade Order of the 16th September, altered my notifications in such a manner as to make them conform to the last received Order of the 16th September. I erased with my pen the printed words "*Cartridges with Balls,*" and inserted as well as I could, "*sixteen sporting Cartridges.*"

Notifications of this kind were delivered by my Clerk to all of my Company, and seasonably received by them.

I am conscious that I have done in this particular all that could reasonably be expected from me, or from any other Officer ; and all I ever did or can do in similar circumstances. I issued my Orders in obedience to the two Brigade Orders, which have been so often mentioned, and I put them in train (as I thought) to be faithfully obeyed. Perhaps it is true, as the General says, I did not make use of all my influence as Commanding Officer over my men, in order to induce them to obey the Order I had thus issued. But, gentlemen, I know of no influence that is *necessary* or *becoming* for any Commanding Officer to use, in order to induce his men to obey his Orders : I have never been in the habit of using any influence, except what my positive Orders carry on the face of them. My Orders had always been punctually obeyed ; and I had no reason to suspect that they would not be obeyed in this instance, as they had always been before. But whatever might have been my belief or suspicions on this head, it was utterly out of my power to have done better, or in any degree different, from what I have done : for I left Boston on Wednesday the 18th September, the day I issued my orders in the manner I have described.

I tarried at my house and with my family in Chelsea, from Wednesday the 18th till Saturday the 21st of September, employed about my own personal and commercial concerns. On Saturday the 21st September I left Chelsea, and set out on a journey to the eastward on business, which absolutely required my attention, and of a nature which could not admit of any further delay.

On this journey to the eastward I was employed from Saturday the 21st, till Friday afternoon, the 27th September ; when I arrived, weary and in precarious health, at my house in Chelsea, where I continued till Saturday afternoon, the 28th September. I then came to Boston, and arrived here on Saturday evening, at 7 o'clock ; attended with my Company at the Gun House at the bottom of the Common, for the purpose of instructing them in the duties, which they would probably be called on to perform on the Monday following. I spent about three hours with them, endeavouring to put them in a condition to make their best appearance on the day of parade.

Every thing I said or did was in public before all those of the Company who were present, and the numerous spectators that thronged the Hall during the time I was with them.

I left Boston that evening, and went to Chelsea, where I remained till Monday morning, the much famed 30th September ; and during the three hours I spent in Boston, I held no secret converse with any individual on earth ; I neither said, or did any thing, but in the presence of all my Company, and of other disinterested witnesses, who did not belong to it.

Thus, Gentlemen, you perceive that for twelve days previous to the parade, viz. from the 18th to the 30th September, I was not more than three hours in Boston, and that during those three hours, all my conduct was open and aboveboard ; that I was on a journey a whole week during those twelve days absence from Boston, a part of which week I was at Portsmouth in New Hampshire, confined to my bed with sickness, and in no condition to use influence over my men to prevail on them to obey my orders ; much less could I be plotting the subversion of harmony and good discipline in General Winslow's Legionary Brigade.

This, Gentlemen, is all I shall offer in vindication of myself against the charges for disobeying the General's two Brigade Orders aforesaid : and I leave it with you to find me innocent or guilty, according as the General's charges on these heads are supported or unsupported, or the statement I have thus far made shall appear to you to be true or false. With regard to my coming on to the parade in an unsoldierlike manner, and *without any of my soldiers*, as the General alleges I did, I will not waste time in endeavouring to refute a charge, which a thousand spectators know to be untrue ; and which the prosecutor himself has invalidated by the abundance of oral and written testimony which he has offered in the course of my trial. He himself has declared, that I appeared on parade with *six* or *eight* of my men ; which is as many as some other Captains did, who have not been arrested. The Court know, that I appeared with six men in complete uniform and discipline ; and I could, if I pleased, call every field officer in the Brigade to testify to the soldierly deportment with which I marched to that parade.

With regard to my conduct on the 30th September, having been at Chelsea from Saturday evening until Monday morning, I arrived at the Green Dragon, the place where I had ordered my Company to assemble, not quite so early as I had assigned for my Company to meet. When I arrived I inquired with surprise, "*Where are the rest of my Company ?*" The Lieutenant informed me that the roll had been called agreeably to the order, precisely at 9 o'clock ; that himself,

four Sergeants, and two musicians, were all that had appeared, and that they were ready to obey my orders. I then ordered the drummer to beat the long roll up and down the place of my Company parade in front of the Green Dragon. After a while, finding no more of my Company make their appearance, I said I could not *make men*, and instantly marched in an orderly and soldierly manner at the head of those, who had obeyed my orders, on to the Common, the place of the general parade. I arrived there in sufficient season before the line was formed. I sent a billet to Captain Brazer, acting as Major, Commandant of the Sub Legion of Light Infantry, informing him of my unpleasant situation, and my readiness to obey his further orders in the best manner I could. He ordered me (through my Ensign, Mr. Munroe, who had been detached from my Company to act as Adjutant for the day) to stay where I was till further orders; and shortly after, on Capt. Messenger's coming into the Common, at the head of the Winslow Blues, Capt. Brazer ordered me to march into the line, and form with the rank of the third Company, which was below Captain Messenger and Captain Davis.

Believing my Commission, which bears date the 15th August, 1803, and which is the only Commission I ever qualified or acted under, to be of earlier date than that of Capt. Messenger or that of Capt. Davis, and knowing that I had outranked the latter gentleman a year before, I did not conceive I had my proper place in the line, although I took that which was assigned me, with all due submission and respect.

Thus, doubting the propriety of the order, which I thus submissively obeyed, I requested of my commanding officer that he would indulge me with a view of Commissions of those gentlemen, under whom he had placed me; at the same time I offered him mine, in order to its being compared with theirs; and then I obeyed his orders as punctiliously as he could wish, and marched into the line, when he ordered me, and where he ordered me.

Was it criminal? was it unsoldierlike to demand a view of Commissions? if so, why was it granted? Why does every Officer carry his Commission in his pocket, except to be used as occasion shall require? The Law says, every Officer with a Commission shall rank according to the date of his Commission; and how is he or any body else to know the date of his Commission, unless he has it ready to produce when called, and to combat the rivalry of those, who make claims to go above him? Why are the Officers required to take rank according to the date of their Commissions, unless there is to be some direct and instant mode of deciding by inspection and comparison of Commission, which is the oldest.

The act of Congress, which provides for the uniformity of the Militia throughout the United States, which was passed May 8, 1792, expressly says, in the eighth section of that act, "That all commissioned Officers shall take rank according to the date of their Commissions; and when two of the same grade bear an equal date, then their rank to be determined by lot."

The Militia Law of this State, passed June 22, 1793, is in exact conformity to the provision of the act of Congress which I have just read. Its requirements are in these words, (Sect. 30,) "At any Regimental Muster, the several Companies shall form in Regiments according to the rank of the Officers commanding them." And in a previous section it says, "that the rank of all Officers of a similar grade shall be settled according to the date of their respective Commissions."

Gentlemen, although my Commission bears date on the 15th August, 1803, the Commissions of Captains Messenger and Davis bear date June 20th, 1805, and although I had, in conformity with the *opinion* of General Winslow, formerly *outranked* Capt. Davis, and although the Law was expressly in my favour, yet I peaceably and respectfully obeyed all orders coming from my superior Officers; I went into the place assigned, and at the time assigned, after the view of Commissions. I went peaceably and respectfully, because I knew that an *Order of Council* had been issued; on which a General Order was formed, and sent down, authorizing Captains Messenger and Davis, with Commissions posterior to mine, to take a rank superior to me.

This, Gentlemen, is an arrangement, which I have ever considered as injurious to my rights and my rank as an Officer; and ever since it has taken place, I have never ceased to bear testimony against it. I have taken every legal and respectful step in my power to be restored to a rank which I once held with honour, and which I trust I have never forfeited by any unmilitary conduct or neglect of duty.

I have sent a memorial to the Governor and Council, stating my complaint, and I sincerely believe that matters are in a train to replace me in my rank; and until I knew the event of my application to Head Quarters, I considered it my duty to protest against any and all arrangements which degrade me from that rank which I have been accustomed to hold in the line, and to which I am entitled by the date of my Commission.

With these principles, and with these motives, I did, on the 30th of September, forward to my commanding Officer the protest which has been read to you, and which General Winslow seems to consider as a Protest against his Brigade Orders,

ordering the parade and ordering the sporting cartridges. But you, Gentlemen, are to decide whether or no the General has not mistaken its true intent and meaning. It speaks for itself ; it is merely a protest against what I conceived my degradation. It was not offered with any view to subvert the good order and discipline of the General's Brigade. It was not offered until I had been ordered peremptorily and rudely to quit the Parade. It was not signed nor forwarded until after I had left the Line. It was not read by the General until after he had withdrawn from the Parade, although he said immediately on receiving it, and before he knew its contents, that *that Protest would be my destruction*. Like Jonah at the city of Nineveh, he has indiscreetly prophesied my destruction, and I really believe like Jonah he wishes me destroyed.

I rely with confidence upon the impartiality and the firmness of this Hon. Court, to save me from the powerful effects of his superior rank and influence against me.

I deny that there is any statement in that protest false or unofficer like for me to state. I have called on the General to point out the statements in that paper, which he alleges are false and unofficer like for me to state. He has not thought proper by his answers to my questions to give me an opportunity to evince my innocence ; and I rely upon you, Gentlemen, to consider me innocent, until I am proved to be guilty.

The oath I take, when I accept my Commission, obliges me to execute the duties of my Commission, according to the Constitution and Laws. Indeed my Commission, on the very face of it, requires the same thing. I should have considered myself as culpably neglectful of my duty and my oath, had I done different from that which I have done. I declare I have acted from a conscientious endeavour to discharge my duty.

Perhaps all of you, Gentlemen, would in similar circumstances have acted different ; perhaps you would have conducted better ; but I trust you will not impute to me any criminality of intention, in an embarrassing situation, where every man, and even the best of men, is liable to err.

I believe it is unnecessary for me to say much on the last grand charge, containing the General's suspicions, that I was abetting and procuring my Company to mutiny against his two Brigade Orders.

I believe you are all men of candour, and that you cannot attach the smallest degree of credit to a charge so utterly destitute of proof. I declare, upon the honour of a soldier and a gentleman, that I was not, directly or indirectly, privy to the private determination of my Company, and cannot make myself accountable for any measures which they had taken during my absence from Boston, and absence from the State.

I believe the Court to consist of gentlemen of too much candour and liberality of sentiment to be biased by any vague rumours, that some men for their own private views and interest have been willing to circulate to my disadvantage. I presume you will judge merely according to the law and the evidence, and pass such sentence as your own honourable feelings shall dictate to be just.

I have thus, Mr. President and Gentlemen, committed to writing in a hasty manner, but as fully as the time allowed since yesterday's adjournment would permit, such a vindication of my conduct, as I trust will secure me an acquittal, *and an acquittal with honour*, from all the charges exhibited against me.

I believe every thing I have said is supported by the evidence which your records contain, and most of which has been drawn out on cross examination, even from the prosecutor, and the other witnesses who have been adduced in behalf of the government.

I do not rest my defence merely on the positive proof I myself have adduced in my own favour ; I rely chiefly and with the greatest confidence on the insufficiency of the evidence against me to support any article or particle of the General's complaint.

I could, if permitted, bring testimony to prove that General Winslow and his associates have long meditated my destruction and removal from command ; and that he said that protest *should* be my destruction, even before he had read it, or could possibly know what it contained. I could prove that this prosecution is set on foot with motives and designs very different from that of a wish to promote the harmony and good discipline of the brigade. But as the Court think it improper for me to go into General Winslow's motives and intentions, I have contented myself not to attempt direct proofs of a point which the Court deem immaterial ; and I leave it to be inferred from the whole manner and course of the testimony, which has been adduced against me. The sanctuary of friendship and the rites of hospitality have been violated ; my bosom friends have been converted into spies and informers. They have been reluctantly compelled to appear before this Court, and relate conversation which took place between them and myself in my own house, in the bosom of my own family, at my own table, during the most convivial and jocular hours I have ever passed in my life, and when their own hilarity and cheerfulness laid open the most hidden recesses of my heart to their free inspection.

Many of the members of my own Company have been called on to furnish evidence to *convict their Captain of participat-*

ing in their own transgressions. And because Mr. Ray, one of my Company, would not (for he could not) tell any thing that could involve me with himself, one of General Winslow's private confidential friends and correspondents, has been adduced to invalidate the testimony of Mr. Ray. With regard to Mr. Jenks (the associate and secret adviser of General Winslow) I leave the Court to judge of his testimony as they please, and to make the inferences that must be obvious to every honourable and impartial mind.

Gentlemen, my cause is now with you ; and I leave it with that confidence which my own conscious innocence inspires.

If any individual of you had any prepossessions against me, I know you have by this time laid them aside, and I do not doubt but the severe scrutiny, which my conduct has sustained, will effectually do away the vague rumours that had by my enemies been put in circulation against me, and prove to me an ample consolation for the long and painful anxiety with which I have waited the decision of this honourable Court.

JOSEPH LORING, JUN.

Capt. of Light Infantry, per General Order.

BOSTON, DEC. 5, 1805.

After the foregoing Defence was read, the Court was cleared, and adjourned to the morrow, 10 o'clock, in order to give judgment in the trials of Lieutenants Bacon and Valentine. The Judge Advocate on the trial of Captain Loring was desired to attend on the day after.

Representatives Chamber, December 7, 1805.

The Court met agreeably to adjournment, and on being called all answered in their places. Captain Loring appeared in his proper person, and answered. The Court was opened by the Marshal.

The Judge Advocate summed up the evidence both for and against Captain Loring, and read his defence to the Court. The Court was then cleared of spectators, and the following question was put by the Judge Advocate to each of the members, beginning with the lowest in grade.

From the evidence which has been adduced, both for and against Captain Joseph Loring, jun. and from what he has offered in his defence, are you of opinion that he is guilty or not guilty of the first article or specification of charge in the com-

plaint of Brigadier John Winslow, exhibited against him? The Court decided that of the first specification of charge the said Joseph was not guilty. Upon the question being put in the same form upon the second article or specification of charge in said complaint, the Court decided, that of the second specification of charge in said complaint, the said Joseph was not guilty. Upon the question being put in the same form upon the third specification of charge in said complaint, the Court decided, that of the third specification of charge the said Joseph was not guilty. Upon the question being put in the same form on the fourth specification of charge in said complaint, the Court decided, that of the fourth specification of charge the said Joseph was not guilty. Upon the question being put in the same form, whether said Joseph was guilty or not guilty of *any part* of the last, or either of the preceding specifications of charge in said complaint, the Court decided, that the said Joseph was in no part guilty thereof. It was therefore declared to be the opinion of the Court, that Captain Joseph Loring, jun. be acquitted of all and singular the charges or specifications of charges exhibited against him.

JOHN BARKER, *President*.

HENRY M. LISLE, *Judge Advocate*.

The Court adjourned until the morrow at 10 o'clock.

Tuesday, Dec. 10, 1805.

The Court met agreeably to adjournment, examined the records and copies of the Judge Advocate, certified the same as below, and then adjourned without day.

COMMONWEALTH OF MASSACHUSETTS.

We do hereby certify that the above and foregoing are true copies of the proceedings of the Court, of the evidence offered to it, and of its opinions and judgments.

	JOHN BARKER, <i>President</i> ,	JOHN ROBINSON,
	BARNABAS CLARK,	JOHN PRATT,
<i>Boston,</i>	OLIVER JOHONNOT,	DAVID SHEPHARD,
<i>Dec. 10,</i>	WM. BARNES,	ELISHA FRENCH, jun.
<i>1805.</i>	HENRY PURKITT,	LEWIS FISHER,
	ADAM KINSLEY,	WILLIAM TURNER.
	MICHAEL HARRIS, jun.	

HENRY M. LISLE, *Judge Advocate*.

On the 24th December, the following orders were issued.

DIVISION ORDERS.

Boston, Dec. 24, 1806.

The Division Court Martial, whereof Lieut. Col. John Barker is President, is hereby ordered to convene at the County Court House in Boston on Wednesday, the 5th of February next, punctually at 11 o'clock, A. M.

Per order of the Major General 1st Division.

JOHN T. SARGENT, A. D. C.

Boston, Feb. 5, 1806.

The Court met agreeably to orders, and on being called, Capt. Adam Kinsley was found to be absent, and on ascertaining he was very sick, the Court adjourned to Tuesday the 25th instant.

On the 17th of Feb. 1806, the following orders were issued.

DIVISION ORDERS.

Boston, Feb. 17, 1806.

The Division Court Martial, whereof Lieut. Col. John Barker is President, ordered to convene, and having met at the County Court House in Boston on Wednesday, the fifth inst. and then adjourned to Tuesday the 25th, in consequence of the absence of one of its members by sickness; the said member still remaining under severe indisposition, the meeting of the Court is hereby suspended until further orders. The Brigadier will cause this notice to be given to the several members of the Court with the utmost dispatch.

SIMON ELLIOT, *Major General of 1st Division.*

On the 20th of March, the following orders were issued.

DIVISION ORDERS.

Boston, March 20, 1806.

The Division Court Martial, of which Lieut. Col. John Barker of the second Regiment of first Brigade is President, is hereby directed to convene at the County Court House in Boston on Wednesday, the 2d day of April next, precisely at 11 o'clock, A. M.

SIMON ELLIOT, *Major General of 1st Division.*

Wednesday, April 2, 1806.

The Court met agreeably to orders, and on being called all answered in their places. The following communication was received from the Major General.

To the President and Members of the Division Court Martial, appointed for the trial of Capt. Joseph Loring, jun. on certain charges exhibited against him by Brigadier General Winslow, of the Legionary Brigade, First Division.

GENTLEMEN,

I have attentively perused, and carefully examined the record of your proceedings on the trial of Capt. Loring, together with the papers, which accompany the same. After such examination and mature consideration, I feel it incumbent on me to declare to you, that from the evidence adduced on the trial, I should have expected a decision, different from the one you have seen fit to make.

The complaint against Captain Loring charges him with an offence of a most dangerous tendency; an offence, subversive in its effects of all subordination and discipline. But, Gentlemen, I do not by any means intend to be understood as saying, that because the complaint alleges offences of an aggravated kind, that it ought to operate as an inducement for conviction: on the contrary, our disbelief of the guilt or criminality of an officer ought, in some degree, to be proportionate to the enormity of the offence charged against him. But we ought not, in any case, to permit our disbelief to be so strong, as to resist that conviction, which is produced by legal and uncontroverted testimony.

The utility of the militia to the defence, security and dignity of our country, essentially depends on its discipline. In this opinion I feel persuaded the Court will concur with me. With this impression, and impelled by an imperious sense of duty, I have deemed it necessary to convene you again to submit to your consideration some of the most forcible and prominent reasons, arising from the testimony offered you, which irresistibly compel me to form an opinion contrary to the one you have expressed in your decisions. I am further impelled to do this, that you may have an opportunity of reviewing your proceedings. I shall therefore proceed to lay before you some of the most operative reasons and objections, which influence my mind on this occasion. This will be done with all the respect due to your opinions, and with the hope you will allow my observations and objections their proper weight, and no more.

K

The complaint against Captain Loring is, that he disobeyed Brigade Orders of the 9th and 16th Sept. 1805 ; and for unsoldierly and unofficerlike conduct on the parade, the 30th of the same month ; and that he there presented a protest, containing false statements against the orders of his superior officers ; and that he did connive at, if not abet and procure the men under his command to mutiny, and to neglect and refuse to appear on said parade.

I view the whole of the conduct imputed to Captain Loring, and charged against him in the complaint, as connected with the mutiny of his men, so much so, that with the strictest propriety it may be considered as a charge against him, *of conniving at, if not abetting and procuring his men to mutiny.*

After examining the record, and finding that the Brigade Orders of the 9th and 16th Sept. 1805, were proved to have been regularly issued to and received by Captain Loring, I proceeded to examine if the mutiny of his men were proved. For unless the mutiny were proved, it would be useless to inquire if Captain Loring had any concern with it. The result of that examination has been such, that no hesitation is felt in declaring to you, that I conceive the *mutiny* of the men to be fully and clearly proved. As mutiny is a crime generally planned in secret, it is often difficult to prove, and it is seldom such clear and satisfactory evidence of its existence is brought to light, as appears on the face of the proceedings of the Court.

Among the most obvious evidence of the *mutiny*, I would refer you to the testimony of *Samuel S. Green*, *Christopher Lincoln* and *Ezra Hawks*, three of the privates of Captain Loring's Company. They prove a meeting of the Company at the Green Dragon, and that an agreement was there made not to come out on the 30th Sept. as ordered. Other strong evidence of the *mutiny* arises from the various confessions, declarations, and conversations of a number of the Company made to and with others (not members of it) respecting the agreement and determination not to appear on the parade on the 30th Sept. These declarations, conversations and confessions derive additional force from the circumstance of their having been made some time *previous* to the 30th September. They are sworn to and described by Col. Badger, Messrs. Jenks, Chandler, Howe and others, as will appear on a recurrence to the record of those gentlemen's testimony. It also appears in evidence, that both of Capt. Loring's Subalterns, *previous* to the 30th Sept. heard of the determination of the Company not to come out on that day. And one of the Subalterns (Ensign Munroe) expressly swears, that he told Captain Loring that he had received such information, and that

he informed Captain Loring of this on the Saturday evening previous to the parade. There is further evidence of the *mutiny* in the testimony of Mr. William Jennings, who swears, that he was at the South End Gun House on Saturday evening, the 28th Sept. while Capt. Loring was exercising his men; *that he there heard the men talking, and that they said, they did not intend to come out on the 30th*, because they understood the officers and men were going to be degraded; that Capt. Loring *heard them talking*, and ordered them to fall in, and told them it was not their business to settle rank; that he expected to see every man in uniform on the morning of the 30th; but added, "If there were not *five men*, he would march on to the field at the time set."

Having been fully satisfied, from the testimony before alluded and referred to, that the *mutiny* was fully proved, it became my duty to examine if there were any evidence of Capt. Loring's participating in it.

To form a fair and correct opinion how far, and wherein Capt. Loring may be judged to have *connived at*, if not *abetted* and *procured* his men to mutiny, the *whole of his conduct*, and the different declarations and confessions, made by him, as they appear in evidence, ought to be taken into view. But before doing this, I think it proper to give my idea of the word *connivance*. As I understand it, it means *voluntary blindness, pretended ignorance, forbearance, &c.*

It now becomes necessary to lay before you some of the most prominent facts and circumstances, which appear in evidence, evincing the *intentions*, which Capt. Loring entertained, and the *declarations* of those intentions, he made prior to the 30th Sept. last, respecting the measures, he meant to adopt on that day. These *declarations* ought to have great weight, they being *indicative* of the *determinations* he had formed.

It appears by the testimony of Capt. Butterfield, that Capt. Loring, on the 14th Sept. last, had an opinion, that the conduct he meant to pursue, on the 30th of the same month, would expose him to a trial by a Court Martial. Capt. Butterfield swears, that Capt. Loring said to him, "That if he could not be allowed the rank, which he took the last season, he would march his men off the field."

Capt. Loring was then in possession of the General Order of the 20th of June, 1805, which decided the relative rank of the Captains in the Sub Legion of Light Infantry. Does not this threat, together with his subsequent conduct; the protest he brought with him to the parade; and the conduct of his privates, which so well coincided with the declarations he made to Capt. Butterfield, plainly shew there was an in-

tention, both on his part and on the part of his privates, to manifest his and their disapprobation and contempt of the orders which had been issued?

I cannot see what inducement, comporting with innocence and duty, Capt. Loring could possibly have, in providing himself (*before he came on the field*) with the paper he calls a protest. The subject and tenour of that paper perfectly coincide with the conduct of his men, and the determinations he had declared to Capt. Butterfield. The protest could not be calculated for any *good* purposes. It could effect nothing less than *embarrassment* and *insult* to his superior officers. *He did not deliver it until he was ordered from the parade, and had quitted the line.* It could not therefore be intended to operate against his being assigned any *particular grade* in the line. The protest was not offered, as appears by Capt. Brazer's testimony, until *after* his place had been assigned to him, and he ordered into it, and had taken it, during all which time he kept it in his own pocket. It was totally unnecessary, in point of *precaution*, for by his own confession he had before that time memorialized the Commander in Chief on the subject of the General Order of the 20th June, 1805.

It was unquestionably the duty of Captain Loring, and every other officer, peaceably to acquiesce in that order. There had been differences in opinion respecting the relative ranks of three Captains in the Sub Legion of Light Infantry. It was necessary that the rank of those officers should be determined, before the Sub Legion could be properly organized. Captains Messenger, Davis and Loring had commanded companies *under Captains' commissions*, which companies did not belong to the Sub Legion of Light Infantry. Neither of them had ever resigned those commissions. All three of them were placed in the Sub Legion of Light Infantry. The question was, How ought they to rank? It was decided and ordered, that all of them should receive new commissions, as Captains of Light Infantry, and that all of them should take rank from the respective dates of their former commissions, which last commissions, as I before observed, neither of them had resigned. By this arrangement, they held the same relative rank with each other *in* the Sub Legion of Light Infantry, as they did when *out* of that Sub Legion. Neither of them, by that arrangement, could gain or lose any rank by being placed in or transferred to the Light Infantry. He, who was the oldest Captain, was to continue the oldest; and he, who was the youngest, was to continue the youngest. I have been induced to be thus explicit on this head, as the General Order of the 20th June, either from not having been properly understood, or from design, has been much misrepresented.

I would now, Gentlemen, request your attention to the other parts of Capt. Loring's conduct on the parade on the 30th of September. The way and manner in which he came on to the field on that day, is shewn by the testimony of General Winslow and Capt. Brazer ; both of whom swear that he appeared with one Subaltern, four Sergeants, one drum, and one fife. It appears, however, that his other Subaltern was on duty that day, acting as Adjutant to the Sub Legion of Light Infantry. It must of itself be considered a very singular and suspicious circumstance, that on a particular day not an *individual private* of a large Company should appear on parade. This is rendered more striking by the testimony of Isaac Rhoades (the orderly Sergeant of the Company) who swears that the Company paraded on the 16th September last by order of Captain Loring, at which time, he says, 46 rank and file turned out. He also swears that the Company paraded again on the 17th October last, by order of the Captain, but the precise number of men, which appeared on that day, he did not recollect. It therefore conclusively follows, that Captain Loring's Company did not mutiny *against* him. The Court will judge from the evidence, whether the men did not mutiny *for* him, and at his *instigation*, or with his *connivance*.

I would here, Gentlemen, turn your attention to some further testimony, which forces upon my mind the belief of Captain Loring's conniving at the mutiny. It is the testimony of General Winslow, Capt. Brazer, Capt. Scott, and Ensign Munroe. The two latter gentlemen both testify to Captain Loring's being informed of the intentions of his men not to parade on the 30th September last, and that this information was given him two days previous to the parade. It appears from the evidence both of General Winslow and Captain Brazer, that Captain Loring did not make any communication to either of them on the subject. And that neither of them knew the situation of Capt. Loring's Company on the morning of the 30th, until he appeared before the Brigade, on the day of the review, in the manner he did. It appears from this part of the record of the evidence, that Capt. Loring knew of the intentions of his men prior to the 30th. His duty undoubtedly was, to communicate the information, either to Capt. Brazer, under whose immediate command he was, or to General Winslow. If Capt. Loring had any doubt that his men would *not* conduct, on the 30th, in the manner he was informed, before that day, they intended to, he could not have had any doubt remaining on the morning of the day of the parade. Not an individual private was present at the Company parade. His not communicating the situation of his Company to either General

Winslow or Capt. Brazer fully satisfies my mind that he was accessory to and did connive at the mutiny.

It further appears in evidence, that Capt. Loring, notwithstanding he issued orders to his Company after the 30th Sept. yet he never did reprimand his men in orders for their conduct on that day. As to his telling the men that "their conduct had placed him in an unpleasant situation, but that he had done his duty, and if they had not done theirs they must take the consequences, &c ; that he should order the Clerk to collect the fines ;" all of it is certainly very far from amounting to a reprimand, expressing that resentment and indignation at their mutinous conduct, which an officer would express and shew unless he participated in it. It appears from the testimony of Samuel S. Green, that fining the men does not operate as punishment upon them. He swears that the fines are appropriated to defray the expenses of the Company. If there should be no fines, the expenses must be defrayed by assessments. If the fines are sufficient to meet the expenses, no assessment is necessary. So that it is quite the same to the men, in a *pecuniary view*, whether they pay for expenses in the way of fines, or assessments.

There is, Gentlemen, on the record a great deal of testimony connecting a long chain of circumstantial evidence in support of the complaint, which could be readily pointed out ; but as my sole object in bringing the Court together again, is, that you may review the evidence for yourselves, I deem it quite unnecessary for me to be more minute, than I have been. I have generally alluded to some of the most leading and commanding part of the evidence, and given you to understand the impression it makes on me. But I hope and trust, you will not permit any of my remarks to have any effect on your minds, further than those remarks are supported by the evidence contained in the record of your proceedings.

I cannot, Gentlemen, rest satisfied that I have discharged the duty incumbent on me on this occasion, if I should conclude this communication without any observation on Captain Loring's mode of defence during his trial. It seems to have been his design, through the whole of his trial, to impress the Court with an idea or sentiment, that he had not been fairly treated, and that the question of rank between him and others was still in discussion and in a train for settlement. The rank of the officers in the Sub Legion of Light Infantry was settled and fixed by a principle which was practised upon in our army during the revolutionary war, and extends throughout the whole militia of this Commonwealth. The principle is this, "That an officer transferred from one corps to another in the

same rank should retain the seniority of rank, which he held prior to the transfer." But the subject of relative rank has nothing to do with the trial, and ought not to have any bearing in the investigation of Capt. Loring's conduct, as it respects the complaint made against him. *Courts martial* do not sit, nor are they ordered to *determine rank*. They are ordered and sit for the trial of military offenders. The rank of the officers of the Sub Legion of Light Infantry was determined on the twentieth of June, 1805, by the highest authority, and that determination is binding upon all. The General Order of that date establishes the point, and it has the same force and efficacy wherever and to whomsoever it applies, as any law of the country.

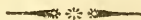
In any event, whether you see cause to adhere to your former opinion, or to revise and alter it, you are not obliged, nor will it be proper for you to give any reasons. And you will be careful not to divulge your own individual opinions, nor those of others (belonging to the Court) unless you are called upon by that authority whose right it is, under the law, to investigate and know them.

Your humble Servant,

SIMON ELLIOT,

Boston, Jan. 6th, 1806.

Major General First Division.



The foregoing communication from the Major General was read and considered by the Court. The Judge Advocate then inquired of each and all the members, whether they were possessed of any reason to induce them to alter the judgment of the Court heretofore set forth on record.

The Court then decided, that they had not any reason to alter their former opinion and judgment. The Court then adjourned *sine die*.



COMMONWEALTH OF MASSACHUSETTS.

We hereby certify the foregoing to be a true record of the proceedings of the Court.

JOHN BARKER, *President*.

HENRY M. LISLE, *Judge Advocate*.

On the 10th April, 1806, the following Division Orders were issued :

DIVISION ORDERS.

Boston, April 10th, 1806.

The Division Court Martial, which was ordered to convene at Boston, on Tuesday, the twenty-ninth day of October last, did then and there meet, and after going through the trials of Lieuts. Valentine and Bacon, proceeded to the trial of Captain Joseph Loring, jun. of the Sub Legion of Light Infantry in the Legionary Brigade, upon certain charges exhibited against him by Brigadier General Winslow, viz. "For disobeying a Brigade Order of the ninth of September, ordering a parade on Boston Common for review and inspection, on the 30th of the same month ; also for disobeying a Brigade Order of the 16th September, directing the Sub Legion of Light Infantry to appear on the said thirtieth, with sixteen sporting-cartridges ; both of which orders the said Captain Loring disobeyed, and in an unsoldierly manner came on said parade without any of his soldiers, and there entered a protest against said orders, by delivering to Captain John Brazer, the senior officer of the Sub Legion of Light Infantry, a paper containing statements as facts which were untrue and unofficerlike for him to state, and containing objections to said orders, totally contrary to their true intent and meaning : and that General Winslow had reason to believe that the said Capt. Joseph Loring, jun. did connive at, if not abet and procure the men under his command to mutiny against said orders, and to neglect and refuse to appear on said parade, to discharge their duty as soldiers on said day, agreeably to the spirit and intent of said orders, and did not make use of all his influence as their commanding officer, that they might appear. All which conduct tends to the subversion of good order and military discipline in said Brigade, and is a bad example to all others to offend in like manner."

Captain Loring appeared in Court and plead not guilty to the several charges above recited ; and after examining divers witnesses and documents offered in evidence both for and against him, the following question was put by the Judge Advocate to each member, beginning with the lowest in grade :

"From the evidence which hath been adduced, both for and against Captain Joseph Loring, jun. and from what he has offered in his defence, are you of opinion that he is guilty or not guilty of the first article or specification of charge, contained in the complaint ?

“The Court decided that of the first specification of charge, the said Joseph was not guilty.

“The same question, applied to each specification of charge, was put in the same manner to the Court, and the Court decided that of the three other specifications of charge, the said Joseph was not guilty.

“Whereupon it was declared to be the opinion of the Court, that Capt. Joseph Loring, jun. be acquitted of all and singular the charges or specification of charges exhibited against him.”

On the 24th December last, the Major General, having satisfied himself of the correctness of the decision of the Court, as it respected the trials of Lieutenants Valentine and Bacon, gave his approbation to the same, and ordered it to be carried into effect ; but not being satisfied with the decision on the trial of Captain Loring, he was under the necessity of ordering the Court to meet again, that it might review its proceedings.

The Court for that purpose was ordered to convene on the 5th of February ; but owing to the sickness of Captain Kinsley, (one of its members) it could not act upon the communication the Major General had prepared. The Court adjourned itself to the 25th of February, in expectation that Captain Kinsley's health would permit his attendance at that time ; but on the 17th of February, in consequence of information from Doctor Samuel Danforth, who had visited the sick member at Canton, and had given his opinion that he would not be able to attend the Court at the expiration of its adjournment, the Major General suspended its meeting until further orders.

On the 20th of March, information being received that Capt. Kinsley would probably be enabled to attend by the 31st, orders were issued for the Court to meet at Boston, on Wednesday, the 2d of April, when and where it did convene, and the opinion of the Major General was communicated. The Court then reviewed its proceedings, and saw fit to adhere to its decision.

The Major General has attentively perused and carefully examined the record of the proceedings of the Court, together with the papers, which accompany the same, all which have been transmitted to him for his approbation or disapprobation.

And, although it is a painful duty, yet after mature consideration, he feels it incumbent on him to declare, that from the evidence, which appears on the record, he should have expected a different decision ; and he cannot, consistently with

his oath of office, give his approbation to the judgment and decision of the Court.

The Major General therefore *disapproves* of the same.

The Court, whereof Lieutenant Colonel John Barker is President, is dissolved.

Capt. Joseph Loring, jun. is discharged from his arrest.

By order of the Major General of the 1st Division,

JOHN T. SARGENT, *A. D. C.*

FINIS.







